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9  
10 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

11 ELLIOT NAZOS, CHRISTINE  
12 BLIGHT, JACK PERRY, PATRICIA  
13 LOUGHNEY, THOMAS PASTORE,  
14 BRIAN HALE, TIMOTHY DOTSON,  
15 EMILY BARBOUR, JILL  
16 SILVERNALE and KYLE BLUMIN,  
individually and on behalf of all others  
similarly situated,

17 Plaintiffs,

18 v.

19  
20 TOYOTA MOTOR CORPORATION  
21 and TOYOTA MOTOR SALES,  
U.S.A., INC.,

22 Defendants.  
23  
24  
25  
26  
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28

Case No. 2:22-cv-02214-PA(Ex)

FIRST AMENDED CLASS ACTION  
COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Elliot Nazos, Christine Blight, Jeffrey Cochran, Brian and Barbara  
2 Saunders, Jack Perry, Thomas Pastore, Timothy and Dawn Dotson, Emily Barbour,  
3 Patricia Loughney, Jill Silvernale, and Kyle Blumin (“Plaintiffs”), on behalf of  
4 themselves and all other similarly situated members of the below-defined Nationwide  
5 Class and State Classes (collectively, the “Class”), bring this action against Defendants  
6 Toyota Motor Corporation (“TMC”) and Toyota Motor Sales, U.S.A., Inc. (“TMS”)  
7 (collectively, “Toyota” or “Defendants”), upon personal knowledge as to the factual  
8 allegations pertaining to themselves and as to all other matters upon information and  
9 belief, based upon the investigation made by the undersigned attorneys, as follows:

## 10 I. INTRODUCTION

11 1. This action arises from Toyota’s failure to disclose a dangerous defect in  
12 the frames of its model year 2007-2014 FJ Cruiser vehicles (the “Class Vehicles” or  
13 “Vehicles”), as well as its contemporaneous misrepresentations regarding the true  
14 nature of those frames, which Toyota prominently featured in the marketing and  
15 advertising campaigns it designed to increase their sales. The excessive corrosion  
16 caused by the defect in the Class Vehicles poses a safety threat to both drivers and  
17 occupants of the Vehicles. In fact, as a result of the defect, some Vehicles are no longer  
18 drivable, having failed to pass safety check(s). Further, Plaintiffs’ extensive expert  
19 analysis, conducted over a period of months, confirms that Toyota was aware of these  
20 defects but has done nothing to cure them.

21 2. As detailed below, Toyota’s nationwide advertising campaigns made  
22 affirmative representations to Plaintiffs and Class members regarding the quality and  
23 rugged nature of the Class Vehicles. In reality, however, the frames of the Vehicles  
24 are defective, as they lack adequate rust corrosion protection, causing them to  
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1 excessively and prematurely rust and corrode (the “Frame Defect” or “Defect”), as  
2 seen in the photographs below:<sup>1</sup>



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17 3. The Defect not only reduces the value (including market value) of the  
18 Class Vehicle, but it subjects the Vehicles’ occupants to a significant safety risk. A  
19 vehicle’s frame forms the basis of a vehicle’s crashworthiness, including its ability to  
20 withstand or minimize damage to the occupant compartment in the event of an  
21 accident. Thus, the Defect compromises the strength of the frames and the overall  
22 structural integrity of the Class Vehicles.

23 4. Plaintiffs, all of whom own Class Vehicles with frames that have  
24 manifested excessive and premature corrosion and rust as a result of the Defect, had  
25 no way of discerning or otherwise learning facts to reveal that Toyota’s representations

26  
27 <sup>1</sup> Sample photographs of the severe rust and corrosion on each of Plaintiff’s Class  
28 Vehicles are attached hereto as composite **Exhibit A**.

1 pertaining to the Class Vehicles were false and misleading, as Toyota failed to disclose  
2 and knowingly concealed the Frame Defect from Plaintiffs (and Class members) in its  
3 marketing materials. It was only after Plaintiffs had purchased their Class Vehicles that  
4 Toyota's incomplete marketing, which omitted reference to the Frame Defect, was  
5 revealed.

6         5. Toyota has long been aware of the Frame Defect in the Class Vehicles'  
7 frames, as well as the safety hazard caused by the excessively corroded frames. Similar  
8 frames on other Toyota vehicles exhibited the same excessive rust corrosion and  
9 perforation exhibited by the Class Vehicles. Toyota has issued numerous Limited  
10 Service Campaigns to address the same Defect at issue here in other vehicles.

11         6. Despite this knowledge, Toyota failed to disclose the existence of the  
12 Defect to Plaintiffs, other Class members, and the public. Further, Toyota has not  
13 issued a recall to inspect and repair the Class Vehicles or offered to reimburse owners  
14 of the Class Vehicles for costs incurred to identify and repair the Defect. Toyota,  
15 despite actual knowledge of the Defect and the potential dangers of the Defect, has  
16 withheld from the Toyota owners and the public this important safety information. In  
17 doing so, Toyota has misled the public with its promotional and technical materials  
18 and written guarantees regarding the rust prevention measures taken by Toyota.

19         7. Plaintiffs and Class members have suffered ascertainable losses and actual  
20 damages as a direct and proximate result of Toyota's misrepresentations and omission  
21 of the Frame Defect in that they: (1) overpaid for the Class Vehicles because the Defect  
22 significantly diminished the value of the Vehicles at the point of purchase and reduced  
23 their market value; (2) have Vehicles that suffer premature and excessive corrosion;  
24 (3) must expend significant money to have their Vehicles' frames and related  
25 components (inadequately) repaired and/or replaced; and (4) must pay for replacement  
26 vehicles while their Class Vehicles are being repaired or are not drivable for failure to  
27 pass safety standards.

8. Plaintiffs and Class members have purchased Class Vehicles that they would not otherwise have purchased, or would have paid less for, had they known of the Frame Defect at the point of sale.

9. Accordingly, Plaintiffs bring claims for (1) fraudulent concealment; (2) unjust enrichment; (3) declaratory relief pursuant to 28 U.S.C. § 2201; and (4) breach of implied warranty; and (5) violations of the consumer protection laws of the states of Illinois, Indiana, Maryland, Massachusetts, Michigan, New York, New Jersey, Pennsylvania, and Utah.

## II. JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §1332(d), because: (a) this action is brought as a proposed class action under Federal Rule of Civil Procedure 23; (b) the proposed Class includes more than 100 members; (c) many of the proposed Class members are citizens of states that are diverse from Defendants' citizenship; and (d) the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

11. This Court also has supplemental jurisdiction over Plaintiffs' remaining state law claims pursuant to 28 U.S.C. § 1367.

12. This Court has personal jurisdiction over Defendants because they have purposefully availed themselves of the privilege of conducting business activities in the state of California, because Defendant TMS is incorporated in the state of California, and because Defendant TMS's principal place of business was located in California until at least 2017. As such, a substantial portion of the relevant, unlawful conduct at issue in this case as to all Class members occurred primarily in California, in this District. Accordingly, Defendants have sufficient contacts with this District to subject Defendants to personal jurisdiction.

13. Venue is proper in this judicial District under 28 U.S.C. §1391(b) because a substantial part of the challenged conduct or omissions giving rise to the claims occurred and/or emanated from this District, because Defendants have caused harm to



1 Class members residing in this District, because Defendants regularly conduct business  
2 in this District, because Defendants are residents of this District under 28 U.S.C.  
3 §1391(c)(2), because they are subject to personal jurisdiction in this District, and  
4 because Defendants have marketed, advertised, distributed, and sold Class Vehicles  
5 within this District.

### 6 **III. PARTIES**

#### 7 **A. Plaintiffs**

8 14. Plaintiff Elliot Nazos is a citizen of Florida and resides in Sarasota,  
9 Florida. Plaintiff owns a 2010 FJ Cruiser, which he purchased new in Matteson,  
10 Illinois, on or about February 10, 2010.

11 15. Plaintiff Christine Blight is a citizen of Pennsylvania and resides in Bear  
12 Creek Township, Pennsylvania. Plaintiff owns a 2007 FJ Cruiser, which she purchased  
13 certified pre-owned in Scranton, Pennsylvania, on or about June 21, 2010.

14 16. Plaintiff Jeffrey Cochran is a citizen of Indiana and resides in  
15 Indianapolis, Indiana. Plaintiff owns a 2007 FJ Cruiser, which he purchased new in  
16 Indianapolis, Indiana on or about April 13, 2006.

17 17. Plaintiffs Brian and Barbara Saunders are citizens of Massachusetts and  
18 reside in West Dennis, Massachusetts. Plaintiffs own a 2007 FJ Cruiser, which they  
19 purchased new in Hyannis, Massachusetts on or about October 27, 2006.

20 18. Plaintiff Jack Perry is a citizen of Ohio and resides in Canton, Ohio.  
21 Plaintiff owns a 2010 FJ Cruiser, which he purchased new in Meadville, Pennsylvania,  
22 on or about September 13, 2010.

23 19. Plaintiff Patricia Loughney is a citizen of Colorado and resides in  
24 Loveland, Colorado. Plaintiff owns a 2010 FJ Cruiser, which she purchased new in  
25 Ledgewood, New Jersey, on or about April 21, 2010.

26 20. Plaintiff Emily Barbour is a citizen of New Jersey and resides in Lebanon,  
27 New Jersey. Plaintiff owns a 2007 FJ Cruiser, which she purchased new, on or about  
28 July 29, 2006.

1           21. Plaintiff Thomas Pastore is a citizen of New York and resides in West  
2 Islip, New York. Plaintiff owns a 2007 FJ Cruiser, which he bought new in Smithtown,  
3 New York, on or about August 1, 2006.

4           22. Plaintiffs Timothy and Dawn Dotson are citizens of Maryland and reside  
5 in Pasadena, Maryland. Plaintiffs own a 2007 FJ Cruiser, which they purchased new  
6 in Baltimore, Maryland, on or about August 11, 2007.

7           23. Plaintiff Jill Silvernale is a citizen of Michigan and resides in Dowagiac,  
8 Michigan. Plaintiff owns a 2007 FJ Cruiser, which she purchased used in Benton  
9 Harbor, Michigan, on or about February 4, 2012.

10          24. Plaintiff Kyle Blumin is a citizen of Utah and resides in Hideout, Utah.  
11 Plaintiff owns a 2013 FJ Cruiser, which he purchased used in Murray, Utah, on or  
12 about April 24, 2018.

13 **B. Defendants**

14          25. TMC is the world's largest automaker and largest seller of automobiles in  
15 the United States. TMC is a Japanese Corporation headquartered in Toyota City, Aichi  
16 Prefecture, Japan.

17          26. TMC sells, markets, distributes, and/or services vehicles throughout the  
18 United States, including the Class Vehicles. At all times relevant hereto, TMC  
19 transacted or conducted business in the state of California and derived substantial  
20 revenue from interstate commerce.

21          27. TMS is a California corporation and at all material times relevant to this  
22 lawsuit maintained its corporate headquarters in Torrance, California. In 2017, after all  
23 the Class Vehicles had been manufactured and sold to Class members, TMS moved its  
24 corporate headquarters to Plano, Texas.

25          28. TMS is the authorized importer and distributor of Toyota motor vehicles  
26 in the United States. TMS is responsible for advertising, marketing, and selling the  
27 Class Vehicles. TMS also manages and supports a network of Toyota dealerships  
28 located throughout the United States.

29. Defendants jointly developed and disseminated to their exclusive distributors and authorized dealers the owner's manuals, warranty booklets, maintenance schedules, advertisements, and other promotional and technical materials relating to the Class Vehicles.

30. At all relevant times, and with the approval and at the direction of TMC, TMS acted through its authorized employees, agents, and distributor and dealer networks in performing activities, including but not limited to advertising, marketing, and selling Class Vehicles, providing warranties, disseminating technical information and mechanic training materials to dealers, and monitoring the performance of Class Vehicles in the United States.

#### IV. FACTUAL ALLEGATIONS

### A. The Class Vehicles and the Frame Defect

31. The FJ Cruiser was released in 2006 as a modern remake of the classic off-roading vehicles Toyota had produced in the late 1950s in the United States.

32. The FJ Cruiser's design harkens back to the design of the original Land Cruiser, the FJ40, with which it shares many structural underpinnings. The FJ Cruiser remained practically unchanged from its release through when it was discontinued in 2014.

33. Toyota called the FJ Cruiser “the most capable 4X4” in its lineup at the time, noting that it had “engineered the FJ Cruiser for serious trail driving capability.”

34. Toyota's December 26, 2005 press release stated that the 2007 FJ Cruiser "provides optimized off-road capabilities, value and styling clues reminiscent of Toyota's famed FJ40 4x4 utility vehicle" and "will deliver true off-road ruggedness, image and performance[.]"

35. Unknown to consumers, however, the FJ Cruiser was manufactured with frames that lacked adequate rust corrosion protection and are prone to excessive and premature rust corrosion. The Frame Defect affects the structural integrity of the Class Vehicles and compromises the quality, durability, and safety of the Vehicles, requiring

1 Class members to pay out-of-pocket to have their Vehicles' frames replaced or  
2 "repaired" in a manner that does not remedy the Defect or otherwise prevent the  
3 recurrence of the problem caused as a result thereof.

4 36. All model year FJ Cruisers are equipped with the same defective frames  
5 and, as a result, all Class Vehicles suffer from the same Frame Defect. In addition,  
6 Toyota marketed, distributed, and warranted the Class Vehicles in the United States in  
7 a uniform manner.

8 37. The Frame Defect is a systemic problem associated with the materials and  
9 production processes used in connection with the Class Vehicles' frames and is not  
10 associated with normal geography or typical environmental factors. The premature and  
11 excessive corrosion and rust caused by the Frame Defect is found in the frames of Class  
12 Vehicles located throughout the United States.

13 **B. The Frame Defect Renders the Class Vehicles Unsafe**

14 38. A vehicle frame is the main supporting structure to which all other  
15 components are attached on a motor vehicle with a "body on frame" design. The  
16 function of frames includes handling static and dynamic loads with unintended  
17 deflection and distortion, preventing undesirable forces and twisting from driving over  
18 uneven surfaces, engine torque, vehicle handling and accelerating and decelerating. A  
19 vehicle's frame is also the primary component that guards against sudden impacts and  
20 collisions.

21 39. The Class Vehicles were manufactured with frames lacking adequate rust  
22 corrosion protection. As a result, the Class Vehicle frames are prone to experiencing  
23 severe premature rust corrosion, which affects the structural integrity of the vehicles,  
24 rendering them unsafe to drive and a hazard on the roadways.

25 40. Rust corrosion has a significant deleterious effect on metal items. It makes  
26 them weaker by replacing the strong iron or steel with flaky powder, ultimately leading  
27 to perforations. Rust corrosion is a progressive process. Once corrosion begins, it will  
28 not stop until adequately repaired.

1        41. Because the damage is typically on the undercarriage of the Class  
2 Vehicles, it goes undetected unless purposefully inspected (for example, through a  
3 mandatory state safety inspection or otherwise).

4        42. Corrosion of the Class Vehicles is unrelated to and separate from normal  
5 surface rust experienced after years of usage and/or exposure to typical environmental  
6 conditions. The excessive rust corrosion on the Class Vehicles compromises the  
7 vehicles' safety, stability, and crash-worthiness because important suspension  
8 components, engine mounts, transmission mounts, and body mounts anchor to the  
9 vehicles' frames.

10       43. According to Popular Mechanics, "[a] rusted-through frame means the  
11 structural and crash integrity of the car is questionable, and it should be inspected and  
12 repaired by a qualified repair facility."<sup>2</sup>

13       44. As described on AutoGuide.com, "excessive rust often signals the  
14 impending death of a vehicle. Its useful life [is] essentially over."<sup>3</sup> Further:

15                Frame rust is a big concern, as it affects the integrity of the  
16 car. Bad enough frame rust can cause parts to snap off or  
17 crack, which will really compromise the safety of you, your  
18 passengers and other motorists. It may also significantly  
diminish the car's ability to protect you in a crash.<sup>4</sup>

19       45. Excessive rust corrosion and perforation on the FJ Cruisers also causes  
20 the vehicles to fail some state safety inspections. Once a vehicle fails a state safety  
21 inspection, consumers cannot use their vehicle unless and until they spend time and  
22 money to remediate the rust and perforation to passing standards; however, during the  
23

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24 <sup>2</sup> See [http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-](http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-win-14930616)  
25 [win-14930616](http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-win-14930616) (last visited Mar. 31, 2022).

26 <sup>3</sup> Sami Haj-Assaad, *Should You Buy a Car with Rust?*, AutoGuide.com (Feb. 24,  
27 2014), available at <http://www.autoguide.com/auto-news/2014/02/buy-car-rust.html>  
(last visited Mar. 31, 2022).

28 <sup>4</sup> *Id.*

1 time the vehicles are prohibited from use, consumers may still be required to pay for  
2 and maintain insurance policy coverage(s) for such vehicles and/or pay mandatory state  
3 licensing and/or taxing costs associated with ownership of the respective vehicles.

4 **C. Defendants' Knowledge of the Frame Defect in the Class Vehicles**

5 46. Toyota has long known that frames on the Class Vehicles exhibited  
6 excessive rust corrosion and perforation because they did not have adequate corrosion-  
7 resistant protection, and have issued numerous service campaigns and warranty  
8 bulletins to address the Defect in the 2005-2010 Tacoma, 2007-2008 Tundra, and  
9 2005-2008 Sequoia (the "Toyota Trucks").

10 47. The frames on the Class Vehicles and the frames on the Toyota Trucks  
11 suffer from the same Frame Defect and are materially the same for purposes of this  
12 lawsuit. Upon information and belief, the Class Vehicles' frames and the Toyota  
13 Trucks' frames were designed using the same defective specifications (materials) and  
14 pursuant to the same defective process (coatings).

15 48. Subject to and without waiving any applicable privileges, testing and  
16 analysis conducted over a period of months for Plaintiffs' counsel by a consulting  
17 expert has confirmed that the Class Vehicles' frames and the Toyota Trucks' frames  
18 have the same metal composition and the same zinc phosphate epoxy coating, and thus,  
19 the Frame Defect in the Class Vehicles and the defect that Toyota acknowledged in the  
20 Toyota Trucks are one and the same.

21 49. Testing and analysis have revealed that the frames were corroding under  
22 the epoxy, indicating that the corrosion was a result of the zinc phosphate coating  
23 Toyota used being inadequate to protect against corrosion and rust. Indeed, analysis  
24 documented the discontinuous nature of the zinc phosphorus layer (pretreatment) in all  
25 of the frames analyzed. A discontinuous coating allows sections of the frame to be  
26 unprotected and, therefore, more likely to suffer rust damage.

27 50. Accordingly, Toyota's knowledge of the Frame Defect in the Class  
28 Vehicles and the resulting premature and excessive corrosion of the Vehicles' frames

1 and related components is evidenced by the service campaigns, warranty bulletins, and  
2 recalls initiated by Toyota to address the same Defect in the Toyota Trucks.

3                   a.     **Toyota's Limited-Service Campaigns, Bulletins, and**  
4                             **Recalls for Toyota Trucks**

5           51.     In or around March 2008, after receiving numerous reports that frames on  
6 approximately 813,000 model year 1995 through 2000 Toyota Tacoma trucks had  
7 exhibited excessive rust corrosion, Toyota initiated a Customer Support Program that  
8 extended the vehicles' warranty coverage for frame perforation caused by  
9 rust corrosion. Under the program, Toyota was to repair or repurchase, at its option,  
10 any vehicle exhibiting perforation of the frame due to rust corrosion.

11          52.     At that time, Toyota conceded that it had investigated "reports of 1995-  
12 2000 model-year Tacoma vehicles exhibiting excessive rust corrosion to the  
13 frame causing perforation of the metal" and "determined that the vehicle frame in some  
14 vehicles may not have adequate corrosion-resistant protection." In a memorandum sent  
15 to dealers, distributors, and certain owners, Toyota emphasized that "[t]his [rust  
16 corrosion] is unrelated to and separate from normal surface rust which is commonly  
17 found on metallic surfaces after some years of usage."

18          53.     Yet, that same month, Toyota distributed a "Warranty Policy Bulletin" to  
19 its dealers, which instructed service managers and warranty administrators that  
20 "[v]ehicle inspections should only be performed if the customer has noticed excessive  
21 rust." Apparently, Toyota sought to limit the costs of this campaign by offering  
22 inspections only when a customer requested one. Toyota, knowing that many owners  
23 would not notice excessive rust corrosion in the undercarriage of their vehicle,  
24 disregarded its responsibility to correct latent defects in its products and reduce the  
25 unreasonable risk that its customers and others would be injured by the undiscovered,  
26 hidden defect.

27          54.     Toyota subsequently modified and expanded this Customer Support  
28 Program to include 2001-2004 Tacoma models.

1        55. In 2012, Toyota recalled approximately 150,000 Tacoma vehicles to  
2 inspect and replace the spare-tire carrier on vehicles sold in twenty cold weather states.<sup>5</sup>  
3 The recall was issued to address the problem of spare-tire carriers rusting through and  
4 causing the spare tire to drop to the ground.

5        56. Through the issuance of two separate Limited Service Campaigns in 2014  
6 and 2015, however, Toyota admitted that the frames of *all* 2005-2008 model year  
7 Tacoma vehicles suffered from inadequate rust protection leading to excessive  
8 premature rust corrosion.

9        57. Initially, Toyota attempted to limit its liability for the defective frames  
10 through the issuance of the 2014 Limited Service Campaign (the “2014 Campaign”),  
11 which applied only to 2005-2008 Tacoma vehicles in the twenty cold weather states  
12 and stated that Toyota had “received reports that certain 2005 through 2008 model year  
13 Tacoma vehicles operated in specific cold climate areas with high road salt usage may  
14 exhibit more-than-normal corrosion to the vehicle’s frame.” Toyota further stated that  
15 it had “investigated these reports and determined that the frame in some vehicles may  
16 not have corrosion-resistant protection sufficient for use in these areas.”

17        58. According to Toyota, lack of adequate corrosion-resistant protection,  
18 “combined with prolonged exposure to road salts and other environmental factors, may  
19 contribute to the development of more-than normal rust in the frame of some vehicles.”  
20 Notably, Toyota made clear that the “condition is unrelated to and separate from  
21 normal surface rust which is commonly found on metallic surfaces after some years of  
22 usage and/or exposure to the environment.”

23        59. In April 2015, however, Toyota issued a second Limited Service  
24 Campaign (the “2015 Campaign”) for model year 2005-2008 Tacoma vehicles in the

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25        <sup>5</sup> Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland,  
26 Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio,  
27 Pennsylvania, Rhode Island, Vermont, and Wisconsin, as well as the District of  
28 Columbia.



1 thirty states not covered by the 2014 Campaign. Again, Toyota made clear that the  
2 “condition is unrelated to and separate from normal surface rust which is commonly  
3 found on metallic surfaces after some years of usage and/or exposure to the  
4 environment.” Through the 2015 Campaign, Toyota conceded that Toyota vehicles in  
5 warm weather states also suffered from excessive rust corrosion and perforation.

6 60. Toyota was also forced to acknowledge excessive frame corrosion on  
7 early model year Toyota Tundra trucks through the issuance of two separate Limited  
8 Service Campaigns in 2009 and 2010 following a NHTSA investigation, which found  
9 that Tundra spare tires (mounted to the rear cross-member) were falling off due to  
10 frame rust.

11 61. In the 2009 Limited Service Campaign, which recalled 110,000 first  
12 generation Tundra vehicles sold in twenty cold weather states and the District of  
13 Columbia, Toyota admitted that the excessive corrosion could cause “the spare tire  
14 stowed under the truck bed [to] become separated from the rear cross-member,” or  
15 “lead to the loss of the rear brake circuits which will increase vehicle stopping distances  
16 and the risk of a crash.” In the 2010 Limited Service Campaign, Toyota recalled all  
17 2000-2003 Tundra vehicles (regardless of geographic location) for the same excessive  
18 frame rust.

19 62. That same year, Toyota, “as an additional measure of confidence” to  
20 owners, issued a Corrosion Resistant Compound (“CRC”) Campaign “as the extension  
21 to Safety Recall 90M - CRC application to the rear portion of the frame” for 2000-  
22 2003 model year Tundra vehicles registered in cold weather states. The CRC campaign  
23 was a combination of a safety recall that offered to apply CRCs to the rear portion of  
24 the vehicle frame, and, for a limited time, the remainder of the frame assembly. The  
25 approximately 316,000 2000-2003 Tundra vehicles sold or registered in the remaining  
26 30 states were covered by a Limited Service Campaign issued by Toyota in 2015.

27 63. In August 2013, Toyota began another Limited Service Campaign for  
28 approximately 78,000 model year 2004-2006 Tundra vehicles in 20 “cold climate

1 states” and the District of Columbia. As it had with the Tacoma, Toyota stated that it  
2 had investigated reports that the Tundra may “exhibit more-than normal corrosion to  
3 the vehicle’s frame” and “determined that the frames in some vehicles may not have  
4 corrosion-resistant protection sufficient for use in these areas.” And, once again,  
5 Toyota acknowledged that the “condition is unrelated to and separate from normal  
6 surface rust which is commonly found on metallic surfaces after some years of usage  
7 and/or exposure to the environment.”

8         64. Toyota acknowledged the same condition was present in its Sequoia  
9 trucks in Limited Service Campaigns that were issued in late 2012 and early 2013, and  
10 which advised dealers that it had determined the vehicles lacked “corrosion-resistant  
11 protection” and advised dealers to inspect the vehicles for “more than normal corrosion  
12 to the vehicle’s frame.” As it did with the Tacoma and Tundra, Toyota made clear that  
13 the “condition” affecting the Sequoia was “unrelated to and separate from normal  
14 surface rust which is commonly found on metallic surfaces after some years of usage  
15 and/or exposure to the environment.”

16         65. In 2017, as part of a resolution to ongoing litigation pertaining to the frame  
17 corrosion in 2005-2010 Tacoma, 2007-2008 Tundra, and 2005-2008 Sequoia trucks,  
18 Toyota provided, among other benefits, free frame inspections, while also (1) applying  
19 a CRC compound or (2) replacing the frames at no cost to the owners of those vehicles.

20         66. Two years later, in a November 2019 Limited Service Campaign, Toyota  
21 admitted that the frames of the 2011-2017 Tacoma similarly lacked corrosion-resistant  
22 protection and also provided free frame inspections with either (1) a CRC compound  
23 or (2) frame replacement to address the Frame Defect in the frames. Toyota has  
24 consistently issued updates to the 2019 Limited Service Campaign over the course of  
25 the past two years in response to reports of the defect in 2011-2017 Tacoma vehicles  
26 and in an effort to prevent and repair the corrosion that continues to plague those  
27 vehicles.

1                   **b. Consumer Complaints Regarding the Frame Defect**

2           67. Class members experience the same issues with the Class Vehicles as  
3 were experienced by owners of the Toyota Trucks discussed *supra*.

4           68. One of the complaints posted on the NHTSA website (#10454963)  
5 resulted from an April 12, 2012 call to the Department of Transportation’s Auto Safety  
6 Hotline regarding a 2011 FJ Cruiser that began exhibiting corrosion at only **2,500**  
7 **miles**—less than **three months after purchase**. The owner advised that Toyota was  
8 made aware of the corrosion, but would neither repair or replace his vehicle.

9           69. This complaint led to a representative from NHTSA’s Office of Defects  
10 Investigation (“ODI”) contacting the consumer via email to obtain additional  
11 information regarding the complaint.<sup>6</sup> In response, the consumer provided the  
12 representative with photographs of his vehicle’s undercarriage showing how quickly  
13 the excessive corrosion had spread at only **5,000 miles**:



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21           70. The consumer also provided the ODI with links to several websites where  
22 they could “find some similar complaints from Toyota customers experienc[ing] the  
23 same issues that [he was] having” with his vehicle. The owner further explained to the  
24 NHTSA representative that he was “concerned that the corrosion will spread and  
25

26  
27           <sup>6</sup> The ODI notifies vehicle manufacturers about complaints when they are entered  
28 and received in the NHTSA database, particularly when it sees similarly described  
complaints from more than a few consumers.

1 continue throughout the vehicle”<sup>7</sup> and “about the ascetics [sic] and the resale value” of  
2 the vehicle.

3 71. The ODI provided the above information to Toyota,<sup>8</sup> which, upon  
4 information and belief, resolved the dispute with the owner.

5 72. The number of complaints made by owners to Toyota, its authorized  
6 dealerships, and NHTSA regarding like experiences with the Frame Defect and safety-  
7 related concerns has grown substantially since 2012.

8 73. Indeed, a review of internet forums and chat groups created specifically  
9 for the discussion of issues related to the Class Vehicles, including the websites  
10 referenced above, reveals thousands of posts and dozens of discussions complaining of  
11 the Frame Defect, demonstrating that Plaintiffs are not alone in this matter. Those  
12 complaints detail both the failures and inadequate responses of Toyota representatives  
13 and Toyota in addressing the Frame Defect and the damage it caused.

14 74. The number of complaints consumers have filed with NHTSA that  
15 identify the Frame Defect and detail their experience with the corresponding excessive  
16 and premature corrosion and rust it causes are numerous and continue to significantly  
17 increase each year, both in number, and severity.

18 75. Below are excerpts from a non-exhaustive set of the consumer complaints  
19 made to NHTSA regarding the Frame Defect (emphasis added):

- 20       • ***“The chassis is so corroded and full of rust it has got to a point***  
21 ***of loosing [sic] the strength and integrity of the whole body.*** This  
22 is very worrisome specially if the car is involved in an accident

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24 <sup>7</sup> His concern was the reality, as described in the following NHTSA complaint  
25 regarding a 2008 FJ Cruiser: “Since I purchased the vehicle brand new in 2006 it has  
26 been rusting and an alarming rate. Even my mechanic says he’s never seen a new car  
rust that quickly. The frame is covered [in] rust, I tried to stop it but it didn’t work.”

27 <sup>8</sup> See [https://static.nhtsa.gov/complaints/10454963/10454963-](https://static.nhtsa.gov/complaints/10454963/10454963-AF0DEE515E3602CAE05375E8789808C8.pdf)  
28 [AF0DEE515E3602CAE05375E8789808C8.pdf](https://static.nhtsa.gov/complaints/10454963/10454963-AF0DEE515E3602CAE05375E8789808C8.pdf) (last visited Mar. 31, 2022).

1 where the front part chassis cannot resist the impact.”  
2 (09/27/2013, 2007 FJ Cruiser)

- 3 • “At 55,000 miles (6 years old) ***my front gravel shield had***  
4 ***completely rusted off and was found in my driveway.*** . . I am  
5 terrified at the thought that I could’ve been driving and my control  
6 arms could’ve rusted off like my gravel shield did.” (01/06/2017,  
7 2011 FJ Cruiser)
- 8 • ***“The rust on the frame is mind blowing. . .This is dangers [sic]***  
9 ***and someone can be injured or dead.”*** (04/11/2017, 2007 FJ  
10 Cruiser)
- 11 • “Frame is rusting ***to the point it is about to break.***” (04/12/2017,  
12 2007 FJ Cruiser)
- 13 • “I took my car in for an inspection at my Toyota dealership today.  
14 I was told if I’m going to sell it or trade it in that now would be  
15 the time to do it. . . . The tech said there are some very weak areas  
16 on the frame and that ***it could fracture with impact or maybe will***  
17 ***eventually by hitting a bad pothole.*** . . . It seemed frightening to  
18 me that ***they suggested I sell it to someone else and not disclose***  
19 ***this potentially life threatening issue.***” (04/26/2018, 2008 FJ  
20 Cruiser)
- 21 • “Frame is rusted so bad mechanic and local dealer said ***vehicle is***  
22 ***not road worthy.*** If I had not taken my vehicle to a mechanic  
23 before service and general maintenance repairs, ***I would have***  
24 ***driven on a 2400 mile vacation across country without knowing***  
25 ***the danger of a failing frame.***” (09/05/2018, 2007 FJ Cruiser)
- 26 • “Took the vehicle in for oil change and check a transmission fluid  
27 leak. ***Dealer found large amounts of rust on frame and***  
28 ***suspension and noted, ‘not recommended to drive.’***”  
(10/04/2018, 2007 FJ Cruiser)
- “While driving, my exhaust broke from hitting a pothole. When I  
took to the shop for repair, we noticed so much rust on the frame.  
I made an appointment at my local dealership to have it inspected,  
we found that the frame is extremely rusted[.] . . . The dealership  
representative became frustrated and even said ***she would not put***

1 *her kids in the FJ Cruiser because its unsafe.*” (11/20/2018, 2007  
2 FJ Cruiser)

- 3 • *“The amount of corrosion and frame flaking is alarming and*  
4 *poses a huge safety issue* for my family, other drivers and myself.  
5 Since purchasing the vehicle I have done everything I can to  
6 maintain and fix this issue including complaining to Toyota  
7 themselves with little to no success. . . . *Body mounts are flaking*  
8 *and crumbling and the frame is corroded and falling apart from*  
9 *the inside out.*” (03/25/2019, 2007 FJ Cruiser)
- 10 • *“Frame has completely disintegrated* where the rear upper  
11 control arm links meet the crossmember, *making the vehicle*  
12 *unsafe and fail the NH state inspection.*” (06/28/2019, 2007 FJ  
13 Cruiser)
- 14 • “Excessive rust on the frame. . . . This is a known issue with the  
15 FJ Cruiser on all the forms online. . . *There are thousands of us*  
16 *with a rotting in frames and Toyota will do nothing.*”  
17 (12/01/2012, 2008 FJ Cruiser)
- 18 • “I’m extremely concerned about my families [sic] safety. I’m  
19 worried brackets are about to rust off, and body mounts and bolts  
20 are showing severe rust, . . . *This needs to be remedied before*  
21 *people start getting hurt while driving with these unsafe chassis*  
22 *and components.*” (12/31/2019, 2008 FJ Cruiser)
- 23 • “Sever[e] rusting of frame, break and suspension components and  
24 brackets. *This 2008 Toyota FJ cruiser is quickly becoming a*  
25 *safety hazard on the roads.*” (02/03/2020, 2008 FJ Cruiser)
- 26 • “Vehicle was stationary in driveway *my frame, some suspension*  
27 *components, and my rocker panels were falling apart in my*  
28 *hands*” (02/22/2020, 2008 FJ Cruiser)
- “Frame, suspension, and brakes have extreme damage from rust.  
*Rear brakes are non-functional because of rust.*” (06/17/2020,  
2008 FJ Cruiser)

- 1       • “Severe rust on all parts of the frame undercarriage, brake lines,  
2       gas tank straps. . . *I am frightened that in an accident the whole*  
3       *body of the truck will just come off the frame.*” 07/27/2020, 2008  
4       FJ Cruiser)
- 5       • “Several *frame supports have corroded from the inside out and*  
6       *are flaking off. Brake components that run along the frame*  
7       *have corroded from the frame* to the bracket that holds them to  
8       the lines themselves. Cause[d] a slow brake leak over time that  
9       eventually *resulted in a dangerous near accident situation that*  
10      *was caused by complete immediate lack of brake pressure.*”  
11      (07/04/2020, 2008 FJ Cruiser)
- 12      • “*The rate at which rust gestates on this vehicle . . . is unsafe and*  
13      *will continue to create unsafe conditions as these vehicles*  
14      *rapidly deteriorate.*” (03/19/2021, 2011 FJ Cruiser)
- 15      • “The vehicle is a 2008 and is *scary rusty on the frame and other*  
16      *components. . . . Eventually one of these faulty frames are going*  
17      *to break in a high speed scenario and serious injury or death*  
18      *will occur.*” (09/27/2020, 2008 FJ Cruiser)
- 19      • “This vehicle has *major rust overtaking the frame and all*  
20      *suspension parts and mounts . . .* I am very concerned I am going  
21      to have suspension parts break off while I’m driving, *I have*  
22      *already had to replace the fuel tank straps that rusted in half*  
23      *while driving do[w]n the highway.*” (08/14/2020, 2007 FJ  
24      Cruiser)
- 25      • “My gas tank straps *completely rusted off leaving the gas tank*  
26      *hanging down below the frame and in extreme compromised*  
27      *unsafe position. Multiple areas of frame rust completely*  
28      *through not supported by either end.*” (11/28/2019, 2007 FJ  
Cruiser)
- “I took my 2007 Fj Cruiser in for regular maintenance and shortly  
after I dropped it off, I was contacted by the dealership and asked  
to come back. *They wanted to show me the bottom of the vehicle*  
*because they said it was no longer safe to drive.* I went back to  
the dealership and the mechanic showed me that the *frame of my*  
*FJ was completely rusted through* with multiple holes in right  
side of the frame - some *holes measuring over 5 inches* in length.  
*It crumbled when touched.*” (12/30/2019, 2007 FJ Cruiser)
- “During 2019-2020 state inspection of 2007 Fj Cruiser with  
78000 miles by *dealer was told that frame is so rusted that it*  
*probably would not pass the next inspection.*” (09/29/2019, 2007  
FJ Cruiser)

- “Rust has *decimated the frame* of this vehicle resulting in the *control arm mount to break away from the frame* of the vehicle. . . . *No welding/body shop will touch it because they deem it unsafe even if welded back to rest of frame.* . . . Fortunately, this broke in a parking lot instead of on the highway *where an accident would have happened or worse.*” (09/03/2019, 2008 FJ Cruiser)

76. Notably, Federal law requires Toyota to monitor defects which can cause a safety issue and report any findings within five (5) days. As a result, Toyota regularly monitors NHTSA complaints in order to meet its reporting requirements under federal law and, thus, obtained knowledge of the Defect through its ongoing monitoring of these complaints. Toyota, knowing the details of production across all lines of vehicles it manufactures, also had knowledge of the Defect in the Class Vehicles from complaints made by owners of the Toyota Trucks containing the same Defect.

#### **D. Marketing and Concealment**

77. Notwithstanding its knowledge of the Frame Defect, Toyota did not disclose the Frame Defect to consumers in its advertisements, press releases, sales brochures, or other marketing material. Instead, Toyota marketed Vehicles’ frames to consumers as “tough”, “rock solid,” and designed to prevent corrosion. When the all-new 2007 FJ Cruiser was released for sale Toyota embarked on an aggressive marketing campaign that promoted the quality and benefits of the frames and related components used on the Class Vehicles, including their purported anti-corrosive properties.

78. For example, in a published advertisement marketing the quality and benefits of the Class Vehicles’ frames, Toyota: (a) told customers that because the FJ Cruiser’s “frame ha[d] to be bulletproof,” it had equipped the vehicle with a frame that had been “proven on the toughest terrain,” making the vehicle “incredibly stable when climbing”; (b) promoted the “[e]xceedingly rigid design” of the frame”; and (c) touted



the frames’ “Electrocoat Deposition (ED) protective coating,” which it represented “seals every nook and cranny and helps the frame live long and strong”:

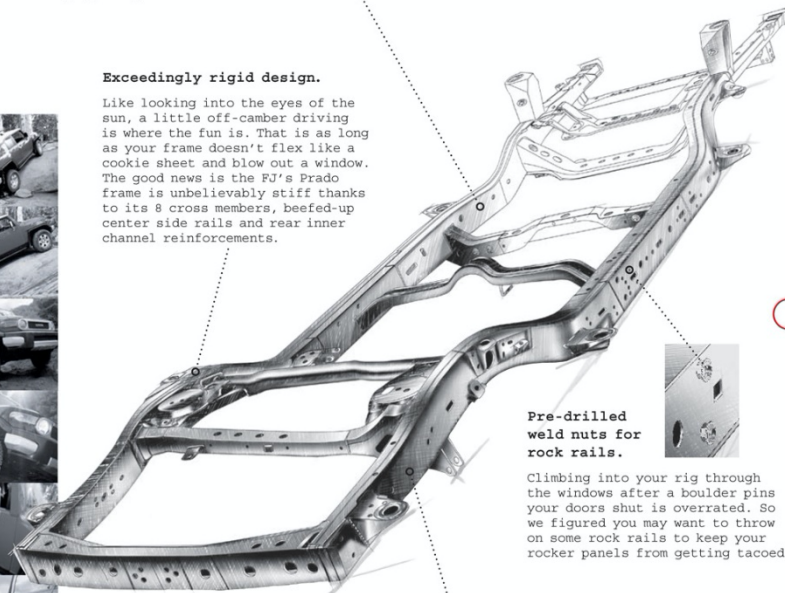


**Modified Land Cruiser Prado frame.**

Whether you're hammering through foot-deep potholes on a dirt road to Palenque, Mexico, or crawling over three-foot boulders on Upper Terminator in Arizona, your frame has to be bulletproof. So we gave the FJ a modified overseas Land Cruiser Prado frame because it's been proven on the roughest terrain in over 150 countries. And with a 105.9-inch wheelbase the FJ is incredibly stable when climbing, yet maneuverable when things get tight.

**Exceedingly rigid design.**

Like looking into the eyes of the sun, a little off-camber driving is where the fun is. That is as long as your frame doesn't flex like a cookie sheet and blow out a window. The good news is the FJ's Prado frame is unbelievably stiff thanks to its 8 cross members, beefed-up center side rails and rear inner channel reinforcements.



**Pre-drilled weld nuts for rock rails.**

Climbing into your rig through the windows after a boulder pins your doors shut is overrated. So we figured you may want to throw on some rock rails to keep your rocker panels from getting taced.

**Electrocoat Deposition (ED) protective coating.**

Rust is nobody's friend, especially your frame's. The ED coating seals every nook and cranny and helps the frame live long and strong.

Length:	167 inches
Width:	50 inches
Wheelbase:	105.9 inches
Jack points:	8
Recovery hooks:	1 rear & 2 front
Aprvd. By: <i>Akira Nishimura</i> Chief Engineer	



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Illustrations © beaudaniels.com

79. In an advertisement marketing the quality and benefits of the Class Vehicles’ undercarriage, Toyota: (a) claimed that its detail in design “[k]eeps the FJ Cruiser’s undercarriage smooth to slide over the rough spots”; (b) represented that the FJ Cruiser had a “[b]elly of steel” that protected the undercarriage components, including “the radiator, power steering rack, [and] engine and transfer case”; and (c)

1 touted the FJ Cruiser's "[t]ough [gas] tank, . . . made of its own multi-layer resin [or  
2 Zinc phosphate coating] that resists punctures and won't rust":



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Smooth operator.

When off the beaten path, count on Mother Nature looking to rip things from your undercarriage for her trophy case. Keeping the FJ Cruiser's undercarriage smooth to slide over the rough spots isn't rocket science, but it does take an attention to detail that's too often overlooked.



Glutton for punishment.

Nothing begs to be torn from its cozy mountings and left in the dirt like your exhaust system. To help keep it out of harm's way, a section over the drive shaft was flattened, the muffler was tucked up to the body and a ball joint was used to connect the front and rear sections to allow the entire system to flex.

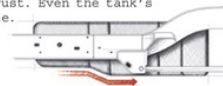
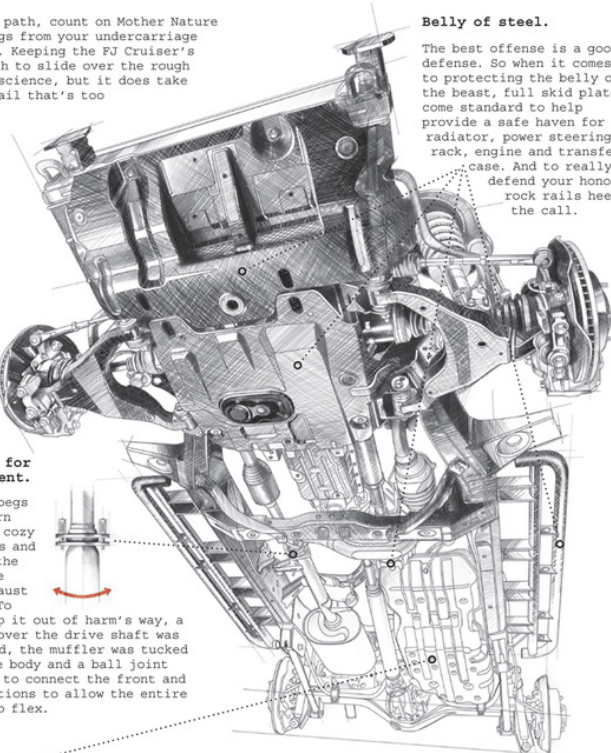


Tough tank.

It's safe to say that gasoline works better in the tank than it does dripping onto the trail. So in addition to its resin skid plate, the gas tank of the FJ is made of its own multi-layer resin that resists punctures and won't rust. Even the tank's shape helps it dodge rocks by keeping inside the breakover angle.

Belly of steel.

The best offense is a good defense. So when it comes to protecting the belly of the beast, full skid plates come standard to help provide a safe haven for the radiator, power steering rack, engine and transfer case. And to really defend your honor, rock rails heed the call.



Approach/Departure Angle:	33.5°/30°
Ground Clearance:	9.6" (4WD model)
Breakover Angle:	27.5°
Aprvd. By:	Akio Nishimura Chief Engineer




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toyota.com/fjcruiser  
Illustrations © beaudariels.com

23 80. In an advertisement marketing the quality and benefits of the Class  
24 Vehicles' body, Toyota: (a) promoted the structural integrity of the FJ Cruiser,  
25 including its "incredibly rigid body using specially placed reinforcements, and high-  
26 tensile-strength sheet steel" to prevent damage when taking the vehicle off-road; and  
27 (b) represented that "the body of the FJ uses anti-corrosion sheet steel in key areas, in  
28 addition to anti-rust wax, sealer and anti-chipping paint."

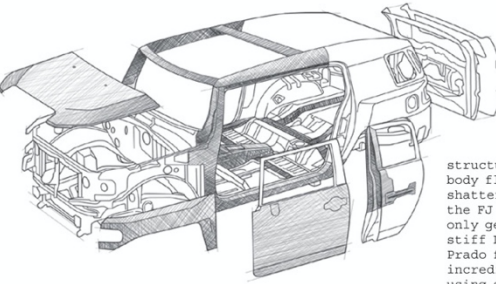
81. Notably, Toyota acknowledged in the above advertisement that “a truck has no greater enemy than rust,” naming it a “silent killer [that] can turn a once virile and shimmering steel chariot into nothing more than a brittle, flaking ghost of itself”:

82. In the owner’s manuals for the Class Vehicles, Toyota incorrectly



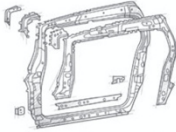
TOPIC: 11. Body

**Curb weight, 4295 lb.\***  
**Apparently, muscle does weigh more than fat.**



What doesn't break us makes us fonder.

Face it, nobody off-roads because of how tranquil and effortless it is, that's what stamp collecting's for. Hitting the trail is about conquering the trail, and every obstacle along the way. Rough terrain and extreme wheel articulation really test the structural integrity of your vehicle, causing body flex that can crack sheet metal and shatter windows. To help prevent such horrors, the FJ Cruiser not only gets an extremely stiff Land Cruiser Prado frame, but an incredibly rigid body using specially placed reinforcements, and high-tensile-strength sheet steel.



High-tensile-strength sheet steel.

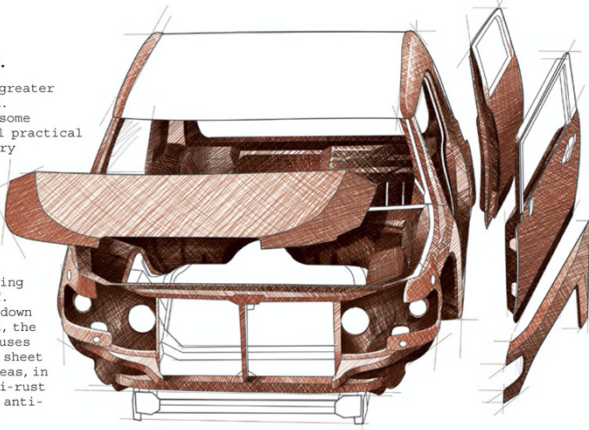
High-tensile-strength steel used for side-member reinforcements.

**Sitting duck.**

If you had to be a part of your rig, it wouldn't be the wheelwells. What other piece of your truck has sticks and stones taking potshots at it all day? Before you know it, the paint starts chipping, leaving the defenseless steel below to start a losing battle with the grim reaper himself. Rust. The FJ's wheelwells get a thick PVC coating to help protect them from such a gruesome fate.

**Metal muncher.**


A truck has no greater enemy than rust. As a result of some electrochemical practical joke, this hungry and silent killer can turn a once virile and shimmering steel chariot into nothing more than a brittle, flaking ghost of itself. Refusing to go down without a fight, the body of the FJ uses anti-corrosion sheet steel in key areas, in addition to anti-rust wax, sealer and anti-chipping paint.



\*4WD automatic model.

Anti-corrosion sheet steel.

Aprvd. By: *Akin Nishimura*  
Chief Engineer



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represents that the purported anti-corrosive measures it had taken would prevent corrosion by stating: “Toyota, through its diligent research, design and use of the most advanced technology available, helps prevent corrosion and provides you with the finest quality vehicle construction.”



83. Further, Toyota advertised the durability of Class Vehicle frames in its sales brochures distributed throughout the United States and available on Toyota’s website. For instance, in the sales brochure for the 2007 FJ Cruiser, Toyota stated that the “FJ Cruiser is not only engineered to conquer anything Mother Nature has to offer, but keep coming back for more.”<sup>9</sup>

84. Similarly, the sales brochure for the 2010 FJ Cruiser states the Vehicle has a “tough-as-nails body” and has been built with “typical Toyota attention to quality and durability.”<sup>10</sup>

85. Also, the sales brochure for the 2011 FJ Cruiser states that Toyota’s “engineering standards were written in stone” and that “[s]olid body-on-frame construction keeps the FJ rigid, which helps the suspension do its work”:<sup>11</sup>

Our engineering standards were written in stone. After five decades of off-road experience, we know a few things about making vehicles that are capable and durable. And FJ Cruiser is the latest beneficiary of this proud heritage. Its V6 engine features Dual Independent Variable Valve Timing with intelligence (VVT-i). Cranking out 260 hp and 271 lb.-ft. of torque, it has the muscle to take on mountains. Add to that an available 6-speed manual transmission with 2-speed transfer case and an electronically controlled locking rear differential, and FJ Cruiser possesses impressive off-road capability. Solid body-on-frame construction keeps the FJ rigid, which helps the suspension do its work. The independent front suspension system delivers nearly eight inches of wheel travel, while the 4-link rear suspension with lateral rod offers more than nine inches. In short: On rocks, it rocks.

<sup>9</sup> 2007 FJ Cruiser Sales Brochure, Toyota (2007), <http://www.toyota120.com/GenDocs/2007FJCbrochure.pdf> (last visited July 27, 2022).

<sup>10</sup> 2010 FJ Cruiser Sales Brochure, Toyota (2010), <https://pictures.dealer.com/suntoyotatc/50f8dea340463872007b7b118d340c8d.pdf> (last visited July 27, 2022).

<sup>11</sup> 2011 FJ Cruiser, Toyota (2011) [https://www.auto-brochures.com/makes/Toyota/FJ%20Cruiser/Toyota\\_US%20FJCruizer\\_2011.pdf](https://www.auto-brochures.com/makes/Toyota/FJ%20Cruiser/Toyota_US%20FJCruizer_2011.pdf) (last visited Mar. 31, 2022).

86. In the 2012-2014 FJ Cruiser sales brochures distributed throughout the United States, Toyota boasted that the FJ Cruiser could withstand “[f]rame-bending boulders,” that its “rock-solid body-on-frame construction keeps the FJ rigid regardless of the terrain”:



### **Mother Nature, who's your daddy now?**

Twenty-five-degree grades. Frame-bending boulders. Dizzying drop-offs. The sort of challenges nature presents when you tackle trails like Rubicon or Moab's Poison Spider Mesa. But five decades of off-road experience has given FJ Cruiser the capability to handle them. Its V6 engine churns out 260 hp and 271 lb.-ft. of torque, in part thanks to Dual Independent Variable Valve Timing with intelligence (VVT-i). The available 6-speed manual transmission features a 2-speed transfer case as well as an electronically controlled locking rear differential, to help ensure the power goes where it's needed. The independent front suspension system delivers nearly eight inches of wheel travel, while the 4-link rear suspension with lateral rod provides more than nine inches. And rock-solid body-on-frame construction keeps the FJ rigid regardless of the terrain.

It's no surprise a vehicle like FJ is able to reach the trail's end in one piece. But FJ Cruiser also handles pavement with equal proficiency. Its Vehicle Stability Control (VSC)<sup>1</sup> adjusts engine power and braking to help maintain the direction in which it's been steered, while Traction Control (TRAC) helps reduce slipping when accelerating. So enjoy the ride. You may find gloating makes the drive home shorter.

87. Toyota also published press releases highlighting the durability of the FJ Cruiser frames. Toyota stated, for instance, that the Class Vehicles' “tough, wide

1 stance is based on a boxed steel ladder-braced frame to which the welded steel body is  
2 mounted.”<sup>12</sup>

3 88. Toyota’s press releases, sales brochures, and other marketing material  
4 touted the durability of the Class Vehicles. Yet, Toyota failed to disclose,  
5 acknowledge, or provide consumers notice in its marketing materials of the Frame  
6 Defect and the damage that it caused. Reasonable consumers had no way to know of  
7 the Frame Defect prior to the purchase of Class Vehicles.

8 89. Toyota’s decision to continue using the frames, notwithstanding its  
9 knowledge of the Frame Defect, and its customers’ lack of knowledge of such Defect,  
10 has caused the Defect to go unremedied to this day.

11 90. Defendants possessed exclusive and superior knowledge and information  
12 regarding the Defect but concealed the Defect from Plaintiff and Class members.  
13 Indeed, Toyota has known of the Frame Defect since prior to the release of the Class  
14 Vehicles into the market, as well as the serious safety risk it causes to the Vehicles’  
15 occupants, yet Toyota failed to inform Class members of the Defect prior to their Class  
16 Vehicle purchases and, to this day, fail to adequately remedy the Defect.

17 **E. Plaintiffs’ Experiences**

18 **a. Elliot Nazos**

19 91. On or about February 12, 2010, Plaintiff Elliot Nazos (for purposes of this  
20 section, “Plaintiff”) purchased his 2010 FJ Cruiser from Planet Toyota, an authorized  
21 Toyota dealer located in Matteson, Illinois (for purposes of this section, the  
22 “Dealership”).  
23

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24 <sup>12</sup> *Toyota FJ Cruiser Uniquely Fuses Off-Road Prowess With Heritage Design and*  
25 *Modern Connectivity*, Toyota (Sept. 6, 2011), [https://pressroom.toyota.com/toyota-](https://pressroom.toyota.com/toyota-2012-fj-cruiser-fuses-off-road-prowess-with-heritage-design/)  
26 [2012-fj-cruiser-fuses-off-road-prowess-with-heritage-design/](https://pressroom.toyota.com/toyota-2012-fj-cruiser-fuses-off-road-prowess-with-heritage-design/) (last visited Mar. 31,  
27 2022); *2014 Toyota FJ Cruiser Continues A Long Tradition of Off-Road Capability*,  
28 Toyota (Sept. 16, 2013), <https://pressroom.toyota.com/2014-toyota-fj-cruiser/> (last  
visited Mar. 31, 2022).

1           92. Plaintiff purchased his Class Vehicle primarily for personal, family, or  
2 household use.

3           93. Passenger safety and reliability were important factors in Plaintiff's  
4 decision to purchase his Class Vehicle. Before making his purchase, Plaintiff reviewed  
5 brochures and the Vehicle's Monroney sticker, spoke to a representative of the  
6 authorized Toyota Dealership who assured him of the quality, safety, and reliability of  
7 the vehicle, and test drove the vehicle he ultimately purchased. Plaintiff selected and  
8 ultimately purchased his Class Vehicle because the vehicle was represented to be and  
9 was marketed as a high-quality vehicle capable of providing safe, reliable  
10 transportation. The purchase was made in part on the advertised safety, reliability, and  
11 quality of the vehicle and its components, including its frame.

12           94. None of the information provided to Plaintiff disclosed any defects with  
13 the frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
14 acting as a reasonable consumer.

15           95. Had Toyota disclosed the Defect before Plaintiff purchased his vehicle,  
16 he would have seen such disclosures and been aware of them. Like all members of the  
17 Class, Plaintiff would not have purchased his Class Vehicle, or would have paid less  
18 for the vehicle, had he known of the Defect.

19           96. Plaintiff properly maintained and serviced his Class Vehicle according to  
20 industry and maintenance guidelines.

21           97. In October 2012, Plaintiff noticed excessive rust accumulation and flaking  
22 on the frame of his Class Vehicle. Shortly thereafter, he brought his Class Vehicle to  
23 Dan Wolf Toyota of Naperville, for an inspection of the frame. The dealer confirmed  
24 that the frame on Plaintiff's Class Vehicle exhibited rust corrosion, but that the  
25 corrosion was normal and there was nothing wrong with frame, which was operating  
26 as intended. Plaintiff's Class Vehicle was covered by warranty at this time, yet Toyota  
27 failed to recommend repairs to the frame.

1        98. In or about July 2018, while Plaintiff was operating his Class Vehicle, the  
2 engine's original splash shield, which is generally unobservable to the consumer due  
3 to its location underneath the engine, fell off of his Class Vehicle.

4        99. Plaintiff then brought his Class Vehicle to Dan Wolf Toyota of Naperville  
5 ("Dan Wolf") to repair his splash shield at an out-of-pocket expense of over \$300.00.

6        100. In or about October 2019, Plaintiff returned his Class Vehicle to Dan Wolf  
7 after parts fell off from underneath his Class Vehicle and Plaintiff observed that the  
8 corrosion on his Class Vehicle's frame had worsened significantly and caused the Class  
9 Vehicle's gas tank straps—which he was unable to locate—to disintegrate and become  
10 completely detached from the Class Vehicle. A salesperson at Dan Wolf represented  
11 to Plaintiff, however, that the rust corrosion on his frame was normal.

12        101. Given the dealership's prior representation that nothing was wrong with  
13 Class Vehicle's frame, together with the fact that the defect is latent and the frame is  
14 neither observable nor reasonably accessible, Plaintiff had no way to know of the  
15 existence of the defect in his Class Vehicle until, at the earliest, October 2019, when  
16 Plaintiff took his Class Vehicle to Dan Wolf to repair its splash shield.

17        102. To date, Toyota has sent no notification to Plaintiff about any permanent  
18 repair, modification, or change to the maintenance schedule that would either repair  
19 the Defect or prevent the Defect from causing additional damage.

20        103. Plaintiff's vehicle continues to experience excessive rust and corrosion on  
21 the frame.

22        104. At all times, Plaintiff, like all Class Members, has attempted to drive his  
23 Class Vehicle in a foreseeable manner and in a manner in which it was intended to be  
24 used.

25        105. As a result of the Defect, Plaintiff has lost confidence in the ability of his  
26 Class Vehicle to provide him safe and reliable transportation for ordinary and  
27 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
28



1 a permanent repair or modification to the maintenance schedule that prevents the  
2 Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

3 **b. Christine Blight**

4 106. On or about June 21, 2010, Plaintiff Christine Blight (for purposes of this  
5 section, "Plaintiff") purchased her 2007 FJ Cruiser from Toyota of Scranton, an  
6 authorized Toyota dealer located in Scranton, Pennsylvania (for purposes of this  
7 section, the "Dealership").

8 107. Plaintiff purchased the Class Vehicle primarily for personal, family, or  
9 household use.

10 108. Passenger safety and reliability were important factors in Plaintiff's  
11 decision to purchase the Class Vehicle. Before making the purchase, Plaintiff  
12 conducted internet research, reviewed brochures and the Vehicle's Monroney sticker,  
13 and spoke to representatives of the Dealership and MotorWorld Toyota, another  
14 authorized Toyota dealership, who assured her of the quality, safety, and reliability of  
15 the vehicle. In fact, one of the dealership's sales representatives repeatedly represented  
16 to Plaintiff and her and her husband that there was a warranty on the body, but the  
17 frame will outlast the life of the Class Vehicle because it was coated from the factory.  
18 Plaintiff selected and ultimately purchased the Class Vehicle because the vehicle was  
19 represented, advertised, and marketed as a high-quality vehicle capable of providing  
20 safe, quality, and reliable transportation in all components, including its frame.

21 109. None of the information provided to Plaintiff disclosed any defects with  
22 the frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
23 acting as a reasonable consumer.

24 110. Plaintiff, in purchasing the Class Vehicle, relied upon Toyota's  
25 representations—made online and in brochures and by representatives of its authorized  
26 dealerships—regarding the quality, safety, and reliability of the Class Vehicle. Had  
27 Toyota disclosed the Defect before Plaintiff purchased her vehicle, she would have  
28 seen such disclosures and been aware of them. Like all members of the Class, Plaintiff

1 would not have purchased her Class Vehicle, or would have paid less for the vehicle,  
2 had she known of the Defect.

3 111. Plaintiff properly maintained and serviced her Class Vehicle according to  
4 the industry and maintenance guidelines.

5 112. In or about 2014, Plaintiff first noticed the vehicle was exhibiting what  
6 appeared to be surface rust and corrosion on the frame and undercarriage of the vehicle.

7 113. In or about early 2018, Plaintiff noticed, for the first time, that the  
8 corrosion on the Class Vehicle's frame had worsened.

9 114. Accordingly, on or about September 28, 2018, Plaintiff's husband, Brian  
10 Blight, contacted Toyota Brand Experience Center to inquire about the corrosion on  
11 the Class Vehicle's frame, including to ask if a recall had been issued to address the  
12 corrosion. Upon information and belief, Toyota assigned this to its National  
13 Headquarters under file #1809280682. Ultimately, a representative stated that there  
14 was no recall, and that Toyota would not be able to assist Mr. Blight.

15 115. In or about January 2020, while Mr. Blight was taking his children to  
16 school and while operating the Class Vehicle on the road, the driver's side rear lower  
17 link bracket, which is generally unobservable to the consumer due to its location  
18 underneath the vehicle, fell off of the Class Vehicle.

19 116. This was the first time that Plaintiff was able to observe the extent of the  
20 corrosion on the Class Vehicle's frame and became aware that the frame had corroded  
21 beyond the surface. Indeed, given the defect is latent and the Class Vehicle's frame is  
22 neither observable nor reasonable accessible, Plaintiff had no way to know of the  
23 existence of the defect in his Class Vehicle prior to this time.

24 117. To date, Toyota has sent no notification to Plaintiff about any permanent  
25 repair, modification, or change to the maintenance schedule that would either repair  
26 the Defect or prevent the Defect from causing additional damage.

27 118. Plaintiff's vehicle continues to experience excessive rust and corrosion on  
28 the frame.

1           119. At all times, Plaintiff, like all Class Members, has attempted to drive his  
2 Class Vehicle in a foreseeable manner and in a manner in which it was intended to be  
3 used.

4           120. As a result of the Defect, Plaintiff has lost confidence in the ability of his  
5 Class Vehicle to provide him safe and reliable transportation for ordinary and  
6 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
7 a permanent repair or modification to the maintenance schedule that prevents the  
8 Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

9           **c. Jeffrey Cochran**

10           121. On or about April 13, 2006, Plaintiff Jeffrey Cochran (for purposes of this  
11 section, "Plaintiff") purchased his 2007 FJ Cruiser from O'Brien Toyota, an authorized  
12 Toyota dealer located in Indianapolis, Indiana (for purposes of this section, the  
13 "Dealership").

14           122. Plaintiff purchased his Class Vehicle primarily for personal, family, or  
15 household use.

16           123. Passenger safety and reliability were important factors in Plaintiff's  
17 decision to purchase his vehicle. Before making his purchase, Plaintiff Cochran  
18 researched the vehicle online including viewing advertisements that touted the quality,  
19 safety, and reliability of the vehicle, and spoke to a representative of the Dealership  
20 named Dale Schmaltz who assured him of the quality, safety, and reliability of the  
21 vehicle. Plaintiff selected and ultimately purchased his Class Vehicle because the  
22 vehicle was represented, advertised and marketed as a high-quality vehicle capable of  
23 providing safe, quality and reliable transportation in all components, including its  
24 frame.

25           124. None of the information provided to Plaintiff disclosed any defects with  
26 the Frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
27 acting as a reasonable consumer.

1        125. Plaintiff, in purchasing the Class Vehicle, relied upon Toyota's  
2 representations—made online and in brochures and by representatives of the  
3 Dealership—regarding the quality, safety, and reliability of the Class Vehicle. Had  
4 Toyota disclosed the Defect before Plaintiff purchased his vehicle, he would have seen  
5 such disclosures and been aware of them. Like all members of the Class, Plaintiff  
6 would not have purchased his Class Vehicle, or he would have paid less for the vehicle,  
7 had he known of the Defect.

8        126. Plaintiff properly maintained and serviced her Class Vehicle according to  
9 the industry and maintenance guidelines.

10        127. In or about June of 2021, Plaintiff brought his Class Vehicle to Ziebart in  
11 Indianapolis, Indiana, for under coating and rust proofing of his vehicle when Ziebart  
12 brought it to Plaintiff's attention that his vehicle has excessive rust and corrosion on  
13 the frame and component parts. Ziebart would not perform any service on Plaintiff's  
14 vehicle and suggested that he bring his vehicle to Hobbs Automotive.

15        128. On or about June 8, 2021 Plaintiff brought his Class Vehicle to Hobbs  
16 Automotive Inc., located in Indianapolis, Indiana to have his vehicle inspected for rust  
17 corrosion and new fuel tank straps installed since the factory installed straps have fallen  
18 off due to the excessive rust and corrosion on his vehicle's frame; however, Hobbs  
19 Automotive refused to perform any repairs and the technician wrote, "frame is severely  
20 rusted in several spots. Do not recommend fixing anything without frame  
21 replacement." As such, no repairs were made at the service visit.

22        129. After being denied repairs due to excessive rust and corrosion on the  
23 frame, on or about June 10, 2021, Plaintiff wrote to NHTSA about his concerns about  
24 the excessive corrosion the Class Vehicle. The NHTSA ODI report ID number is  
25 11420434 and states as follows:

26                    The contact owns a 2007 Toyota FJ Cruiser. The contact stated  
27                    that the vehicle was taken to an independent mechanic to replace  
28                    the gas tank trunk strap. The mechanic informed him that the

undercarriage of the vehicle was extremely corroded and that the vehicle was not safe to drive. The local dealer was contacted about the failure and he was informed over the phone that the entire sub-frame of the vehicle needed to be replaced out of pocket. The vehicle was not yet repaired. The manufacturer was not made aware of the failure. The failure mileage was 81,875.

130. In addition, on or about December 14, 2021, Plaintiff sent an email to NHTSA requesting to amend his ODI submission to: vsh@dot.gov because since his initial complaint the gasoline tank straps had fallen off due to the excessive corrosion on the Class Vehicle's Frame.

131. To date, Toyota has sent no notification to Plaintiff about any permanent repair, modification or change to the maintenance schedule that would either repair the Defect or prevent the Defect from causing additional damage.

132. Plaintiff's vehicle continues to experience excessive rust and corrosion on the frame.

133. At all times, Plaintiff, like all Class Members, has attempted to drive his Class Vehicle in a foreseeable manner and in a manner in which it was intended to be used.

134. As a result of the Defect, Plaintiff has lost confidence in the ability of his Class Vehicle to provide him safe and reliable transportation for ordinary and advertised purposes. Until and unless Toyota fully discloses the Defect or implements a permanent repair or modification to the maintenance schedule that prevents the Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

**d. Jack Perry**

135. On or about September 13, 2010, Plaintiff Jack Perry (for purposes of this section, "Plaintiff") purchased his 2010 FJ Cruiser from Palmiero Toyota Scion, an authorized Toyota dealer located in Meadville, Pennsylvania (for purposes of this section, the "Dealership").

136. Plaintiff purchased his Class Vehicle primarily for personal, family, or household use.

1           137. Passenger safety and reliability were important factors in Plaintiff's  
2 decision to purchase his vehicle. Before making his purchase, Plaintiff conducted  
3 online research, which included viewing Toyota's and the Dealership's websites;  
4 reviewed brochures, sales promotional materials, and the Class Vehicle's window  
5 sticker (the "Monroney" sticker); and spoke to a representative of the authorized  
6 Toyota dealership who assured him of the quality, safety, and reliability of the vehicle,  
7 and test drove the vehicle she ultimately purchased. Plaintiff selected and ultimately  
8 purchased his Class Vehicle because the vehicle was represented, advertised and  
9 marketed as a high-quality vehicle capable of providing safe, quality and reliable  
10 transportation in all components, including its Frame.

11           138. None of the information provided to Plaintiff's disclosed any defects with  
12 the Frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
13 acting as a reasonable consumer.

14           139. Plaintiff, in purchasing the Class Vehicle, relied upon Toyota's  
15 representations—made online and in brochures and by representatives of the  
16 Dealership—regarding the quality, safety, and reliability of the Class Vehicle. Had  
17 Toyota disclosed the Defect before Plaintiff purchased his vehicle, he would have seen  
18 such disclosures and been aware of them. Like all members of the Class, Plaintiff  
19 would not have purchased his Class Vehicle, or he would have paid less for the vehicle,  
20 had he known of the Defect

21           140. Plaintiff properly maintained and serviced his Class Vehicle according to  
22 industry and maintenance guidelines.

23           141. In or about December 2020, Plaintiff took his Class Vehicle in for service  
24 to an authorized Toyota Dealership after noticing the excessive frame rust and  
25 excessive flaking of his Class Vehicle's frame. At this service visit he directed the  
26 technician to look at the rust on his Class Vehicle's frame. During this service visit, and  
27 at each and every oil change since, he has mentioned this Frame Defect to the  
28

1 technicians. However, each time, the technicians returned the Class Vehicle without  
2 providing any option to repair the Frame Defect.

3 142. To date, Toyota has sent no notification to Plaintiff about any permanent  
4 repair, modification, or change to the maintenance schedule that would either repair  
5 the Defect or prevent the Defect from causing additional damage.

6 143. Plaintiff's vehicle continues to experience excessive rust and corrosion on  
7 the frame.

8 144. At all times, Plaintiff, like all Class Members, has attempted to drive his  
9 Class Vehicle in a foreseeable manner and in a manner in which it was intended to be  
10 used.

11 145. As a result of the Defect, Plaintiff has lost confidence in the ability of his  
12 Class Vehicle to provide him safe and reliable transportation for ordinary and  
13 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
14 a permanent repair or modification to the maintenance schedule that prevents the  
15 Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

16 **e. Brian and Barbara Saunders**

17 146. On or about October 27, 2006, Plaintiffs Brian and Barbara Saunders (for  
18 purposes of this section, "Plaintiffs") purchased their 2007 FJ Cruiser from Hyannis  
19 Toyota Scion, an authorized Toyota dealer located in Hyannis, Massachusetts (for  
20 purposes of this section, the "Dealership").

21 147. Plaintiff Brian and Barbara Saunders purchased their Class Vehicle  
22 primarily for personal, family, or household use.

23 148. Passenger safety and reliability were important factors in Plaintiffs'  
24 decision to purchase their Class Vehicle. Before making their purchase, Plaintiffs  
25 reviewed the window sticker (the "Monroney" sticker), spoke to a representative of the  
26 authorized Toyota dealership who assured them of the quality, safety, and reliability of  
27 the vehicle, and test drove the vehicle they ultimately purchased. Plaintiffs selected and  
28 ultimately purchased the Class Vehicle because the vehicle was represented, advertised

1 and marketed as a high-quality vehicle capable of providing safe, quality and reliable  
2 transportation in all components, including its Frame.

3 149. None of the information provided to Plaintiffs disclosed any defects with  
4 the Frame. Toyota's misstatements and omissions were material to Plaintiffs.

5 150. Had Toyota disclosed the Defect before Plaintiffs purchased their vehicle,  
6 they would have seen such disclosures and been aware of them. Like all members of  
7 the Class, Plaintiffs would not have purchased their Class Vehicle, or would have paid  
8 less for the vehicle, had they known of the Defect.

9 151. Plaintiffs properly maintained and serviced their class vehicle according  
10 to Toyota's recommended maintenance guidelines.

11 152. In March of 2021 Mrs. Saunders went to All Out Performance, located in  
12 Harwich, Massachusetts, for a diagnosis of the frame. The technician wrote, "found  
13 vehicle to have severe structural rot at left front lower, control arm mount, left and right  
14 rear upper control arm mounts and frame, (right upper arm has severed at frame) and  
15 rear lateral track bar at rear axle. In addition to frame rust I discovered the rear axle  
16 housing has rusted to the point of weeping oil. At this point I do not advise driving the  
17 vehicle." Mrs. Saunders paid \$500.00 for the diagnosis.

18 153. On or about April 27, 2021, Plaintiff Barbara Saunders spoke with a  
19 representative named Chris from Toyota Brand Experience Center about her concerns  
20 with the Class Vehicle exhibiting excessive rust and corrosion of the frame and  
21 associated components. He advised that the car was out of warranty; however, the  
22 Toyota Brand experience center representative Chris emailed her the Case #  
23 210427000800.

24 154. On or about May 07, 2021, Plaintiffs had their vehicle towed to Toyota of  
25 Hyannis to have the vehicle's frame inspected for rust. The technician wrote, "Rear  
26 cross member of frame has holes. Brackets for rear arms rotted off and not attached to  
27 frame." The technician also mentioned that there were no frames available. The  
28 Saunders were charged \$96.05 for the diagnosis and no repairs were completed.



1        155. To date, Toyota has sent no notification to Plaintiff about any permanent  
2 repair, modification, or change to the maintenance schedule that would either repair  
3 the Defect or prevent the Defect from causing additional damage.

4        156. Plaintiffs' vehicle continues to experience excessive rust and corrosion on  
5 the frame.

6        157. At all times, Plaintiffs, like all Class Members, have attempted to drive  
7 their Class Vehicle in a foreseeable manner and in a manner in which it was intended  
8 to be used.

9        158. As a result of the Defect, Plaintiffs have lost confidence in the ability of  
10 their Class Vehicle to provide them safe and reliable transportation for ordinary and  
11 advertised purposes. Due to safety concerns, Plaintiffs have not driven the vehicle since  
12 in or about March 2021. Until and unless Toyota fully discloses the Defect or  
13 implements a permanent repair or modification to the maintenance schedule that  
14 prevents the Defect from causing damage, Plaintiffs' loss of confidence will continue  
15 unabated.

16        **f. Patricia Loughney**

17        159. On or about April 21, 2010, Plaintiff Patricia Loughney (for purposes of  
18 this section, "Plaintiff") purchased her 2010 FJ Cruiser from Towne Toyota, an  
19 authorized Toyota dealer located in Ledgewood, New Jersey (for purposes of this  
20 section, the "Dealership").

21        160. Plaintiff purchased her Class Vehicle primarily for personal, family, or  
22 household use.

23        161. Passenger safety and reliability were important factors in Plaintiff's  
24 decision to purchase his Class Vehicle. Before making her purchase, Plaintiff reviewed  
25 brochures and the Vehicle's Monroney sticker, spoke to a Dealership representative  
26 about the quality, safety, and reliability of the vehicle, saw T.V. commercials that  
27 touted about the quality, safety, and reliability of the vehicle, and test drove the vehicle  
28 he ultimately purchased. Plaintiff selected and ultimately purchased his Class Vehicle

1 because the vehicle was represented, advertised, marketed as a high-quality vehicle  
2 capable of providing safe, quality, and reliable transportation in all components,  
3 including its frame.

4 162. None of the information provided to Plaintiff disclosed any defects with  
5 the frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
6 acting as a reasonable consumer.

7 163. Had Toyota disclosed the Defect before Plaintiff purchased her vehicle,  
8 she would have seen such disclosures and been aware of them. Like all members of  
9 the Class, Plaintiff would not have purchased her Class Vehicle, or she would have  
10 paid less for the vehicle, had she known of the Defect.

11 164. Plaintiff properly maintained and serviced her Class Vehicle according to  
12 industry and maintenance guidelines.

13 165. In approximately 2014, Plaintiff observed rust, corrosion, and flaking on  
14 the undercarriage and the frame of her Class Vehicle.

15 166. On or about February 25, 2014, Plaintiff brought her Class Vehicle to the  
16 Dealership for a brake repair. While there, she inquired as to the corrosion she had  
17 observed and the prior recall of the Toyota Tundra concerning frame corrosion. The  
18 Dealership advised her that there was no recall on the FJ Cruiser frame. The dealership  
19 further advised that the corrosion was normal and there was nothing wrong with the  
20 Class Vehicle's frame, which was operating as intended. Plaintiff's Class Vehicle was  
21 covered by an extended warranty at this time; yet the Dealership would not perform  
22 any repairs. After the Dealership declined to repair the frame, Plaintiff brought her  
23 Class Vehicle to an auto body shop to have an undercoat applied to the frame of her  
24 Class Vehicle at a \$2,800.00 out-of-pocket expense, but, in reliance on the dealership's  
25 assurances that there was nothing wrong with the Class Vehicle's frame, took no  
26 further action.

27 167. It was until 2017 or 2018 that Plaintiff first observe the extent of the  
28 corrosion on the Class Vehicle's frame and became aware that the frame had corroded

1 beyond the surface. Indeed, given the defect is latent and the Class Vehicle's frame is  
2 neither observable nor reasonable accessible, Plaintiff had no way to know of the  
3 existence of the defect in his Class Vehicle prior to this time.

4 168. To date, Toyota has sent no notification about any permanent repair,  
5 modification or change to the maintenance schedule that would either repair the Defect  
6 or prevent the Defect from causing additional damage.

7 169. Plaintiff's Class Vehicle continues to experience excessive rust and  
8 corrosion on the frame.

9 170. At all times Plaintiff, like all Class Members, has attempted to drive her  
10 Class Vehicle in a foreseeable manner and in a manner in which it was intended to be  
11 used.

12 171. As a result of the Defect, Plaintiff has lost confidence in the ability of her  
13 Class Vehicle to provide her safe and reliable transportation for ordinary and advertised  
14 purposes. Until and unless Toyota fully discloses the Defect or implements a  
15 permanent repair or modification to the maintenance schedule that prevents the Defect  
16 from causing damage, Plaintiff's loss of confidence will continue unabated.

17 **g. Emily Barbour**

18 172. On or about July 29, 2006, Plaintiff Emily Barbour (for purposes of this  
19 section, "Plaintiff") purchased her 2007 FJ Cruiser from Muller Toyota Scion, an  
20 authorized Toyota dealer located in Clinton, New Jersey (for purposes of this section,  
21 the "Dealership").

22 173. Plaintiff Barbour purchased her Class Vehicle primarily for personal,  
23 family, or household use.

24 174. Passenger safety and reliability were important factors in Plaintiff's  
25 decision to purchase her Class vehicle. Before making her purchase, Plaintiff reviewed  
26 brochures and the Vehicle's Monroney sticker, spoke to a representative of the  
27 authorized Toyota Dealership who assured her of the quality, safety, and reliability of  
28 the vehicle, and test drove the vehicle she ultimately purchased. Plaintiff selected and

1 ultimately purchased her Class Vehicle because the vehicle was represented,  
2 advertised, and marketed as a high-quality vehicle capable of providing safe, reliable  
3 transportation in all components, including its frame.

4 175. None of the information provided to Plaintiff disclosed any defects with  
5 the frame. Toyota's omissions were material to Plaintiff, who was acting as a  
6 reasonable consumer.

7 176. Had Toyota disclosed the Defect before Plaintiff purchased her vehicle,  
8 she would have seen such disclosures and been aware of them. Like all members of the  
9 Class, Plaintiff would not have purchased her Class Vehicle, or she would have paid  
10 less for the vehicle, had he known of the Defect.

11 177. Plaintiff properly maintained and serviced her Class Vehicle according to  
12 industry and maintenance guidelines.

13 178. On or about September 29, 2021, Plaintiff brought her vehicle to  
14 Fairmount Hilltop Garage for regular maintenance where the mechanic advised her  
15 that her vehicle had exhibited excessive rust and corrosion on the frame.

16 179. Upon learning of the excessive rust on the frame, Plaintiff brought her  
17 vehicle to Toyota World of Clinton, an authorized Toyota Dealership in Clinton New  
18 Jersey, with concerns that her Class Vehicle had excessive rust and corrosion. While  
19 there, Robert Stulter, the Service Director of the dealership, advised that she would be  
20 required to pay \$150 just for preparing an estimate. Plaintiff requested that the  
21 dealership take down her information and that they contact Toyota directly and be in  
22 touch. To date, Toyota Motors and the dealership have not contacted Plaintiff.

23 180. After Toyota refused to prepare a complimentary estimate, on or about  
24 November 3, 2021, Plaintiff brought her Class vehicle to Rick Allen's Auto Repair  
25 shop, in Hampton, NJ to have the technicians look at the frame. While at the shop and  
26 while the vehicle was on a lift, Plaintiff took photos of the rust and corrosion on the  
27 frame and undercarriage. Rick Allen Auto Repair informed Plaintiff Barbour that it  
28

1 would not be able to make the needed repairs to or replacements of the rusted frame  
2 and undercarriage.

3 181. On or about December 3, 2021, Plaintiff went back to Toyota World with  
4 the pictures and showed the photos to John Castellano, a sales and leasing consultant,  
5 and Dave Ventura, the General Sales manager, at the dealership. Mr. Ventura contacted  
6 the service department and requested that they provide a “ball-park” estimate for  
7 replacement of the frame, which the service department advised was at least \$16,000  
8 to repair.

9 182. To date, Toyota has sent no notification to Plaintiff about any permanent  
10 repair or modification or change to the maintenance schedule that would either repair  
11 the Defect or prevent the Defect from causing additional damage.

12 183. Plaintiff’s Class Vehicle continues to experience excessive rust and  
13 corrosion on the frame.

14 184. At all times, Plaintiff, like all other Class Members, has attempted to drive  
15 her Class Vehicle in a foreseeable manner as it was intended to be used.

16 185. As a result of the Defect, Plaintiff has lost confidence in the ability of her  
17 Class Vehicle to provide her safe and reliable transportation for ordinary and advertised  
18 purposes. Until and unless Toyota fully discloses the Defect or implements a  
19 permanent repair or modification to the maintenance schedule that prevents the Defect  
20 from causing damage, Plaintiff’s loss of confidence will continue unabated.

21 **h. Thomas Pastore**

22 186. On or about August 1, 2006, Plaintiff Thomas Pastore (for purposes of  
23 this section, “Plaintiff”) purchased his 2007 FJ Cruiser from Smithtown Toyota, an  
24 authorized Toyota dealer located in Smithtown, New York (for purposes of this  
25 section, the “Dealership”).

26 187. Plaintiff purchased his Class Vehicle primarily for personal, family, or  
27 household use.  
28

1        188. Passenger safety and reliability were important factors in Plaintiff's  
2 decision to purchase his Class Vehicle. Before making his purchase, Plaintiff reviewed  
3 brochures, Toyota's website, and the Vehicle's Monroney sticker, and spoke to a  
4 representative of the authorized Toyota Dealership who assured him of the quality,  
5 safety, and reliability of the vehicle. Plaintiff also test drove a 2007 FJ Cruiser. Plaintiff  
6 selected and ultimately purchased his Class Vehicle because the vehicle was  
7 represented, advertised, and marketed as a high-quality vehicle capable of providing  
8 safe, quality, and reliable transportation in all components, including its frame.

9        189. None of the information provided to Plaintiff disclosed any defects with  
10 the frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
11 acting as a reasonable consumer.

12        190. Had Toyota disclosed the Defect before Plaintiff purchased his vehicle,  
13 he would have seen such disclosures and been aware of them. Like all members of the  
14 Class, Plaintiff would have not purchased his Class Vehicle, or would have paid less  
15 for the vehicle, had he known of the Defect.

16        191. Plaintiff properly maintained and serviced his Class Vehicle according to  
17 industry and maintenance guidelines.

18        192. In or about 2012, in connection with the replacement of his Class  
19 Vehicle's exhaust, Plaintiff noticed signs of rust and corrosion on the Class Vehicle's  
20 frame.

21        193. Plaintiff then contacted the Dealership, as well as another of Toyota's  
22 authorized dealerships, Oakdale Toyota, to inquire about the corrosion he had observed  
23 on his vehicle's frame and undercarriage. The Toyota dealerships advised they were  
24 unaware of any issues or recalls for the frame and that corrosion of the frame is normal.

25        194. The corrosion on the Class Vehicle's frame worsened over time, and on  
26 or about September 1, 2021, Plaintiff brought his vehicle to Garden State Undercoating  
27 to have an undercoating applied to his Class Vehicle's frame at an out-of-pocket  
28 expense of \$3,450.00.

1        195. It was then that Plaintiff first observed the extent of the corrosion on the  
2 Class Vehicle's frame and became aware that the frame had corroded beyond the  
3 surface. Indeed, given the defect is latent and the Class Vehicle's frame is neither  
4 observable nor reasonable accessible, Plaintiff had no way to know of the existence of  
5 the defect in his Class Vehicle prior to this time.

6        196. To date, Toyota has sent no notification to Plaintiff about any permanent  
7 repair or modification or change to the maintenance schedule that would either repair  
8 the Defect or prevent the Defect from causing additional damage.

9        197. Plaintiff's Class Vehicle continues to experience excessive rust and  
10 corrosion on the frame.

11        198. As a result of the Defect, Plaintiff has lost confidence in the ability of his  
12 Class Vehicle to provide him safe and reliable transportation for ordinary and  
13 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
14 a permanent repair or modification to the maintenance schedule that prevents the  
15 Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

16        **i. Timothy and Dawn Dotson**

17        199. On or about August 11, 2007, Plaintiffs Timothy and Dawn Dotson (for  
18 purposes of this section, "Plaintiffs") purchased their 2007 FJ Cruiser from Russel  
19 Motor Cars, an authorized Toyota dealer located in Baltimore, Maryland (for purposes  
20 of this section, the "Dealership").

21        200. Plaintiffs purchased their Class Vehicle primarily for personal, family, or  
22 household use.

23        201. Passenger safety and reliability were important factors in Plaintiff's  
24 decision to purchase their Class Vehicle. Before making his purchase, Plaintiffs  
25 reviewed brochures and the Vehicle's Monroney sticker, spoke to a representative of  
26 the authorized Toyota Dealership who assured them of the quality, safety, and  
27 reliability of the vehicle, and test drove the vehicle they ultimately purchased. Plaintiffs  
28 selected and ultimately purchased their Class Vehicle because the vehicle was

1 represented, advertised, and marketed as a high-quality vehicle capable of providing  
2 safe, quality, and reliable transportation in all components, including its frame.

3         202. None of the information provided to Plaintiffs disclosed any defects with  
4 the frame. Toyota's misstatements and omissions were material to Plaintiffs, who was  
5 acting as reasonable consumers.

6         203. Plaintiffs, in purchasing their Class Vehicle, relied upon Toyota's  
7 representations—made in brochures and by representatives of the Dealership—  
8 regarding the quality, safety, and reliability of the Class Vehicle. Had Toyota disclosed  
9 the Defect before Plaintiffs purchased their Class Vehicle, they would have seen such  
10 disclosures and been aware of them. Like all members of the Class, Plaintiffs would  
11 not have purchased their Class Vehicle, or they would have paid less for the vehicle,  
12 had they known of the Defect.

13         204. Plaintiffs properly maintained and serviced his Class Vehicle according  
14 to industry and maintenance guidelines.

15         205. On or about February 21, 2012, with approximately 69,568 miles on the  
16 odometer, Mr. Dotson brought the Class Vehicle to Brown's Toyota to discuss  
17 Plaintiffs' concerns about rust and corrosion on their Class Vehicle. The dealership  
18 advised that the corrosion on their Class Vehicle's frame was normal and that there  
19 was nothing wrong with the frame, which was operating as intended. Plaintiffs' Class  
20 Vehicle was covered by extended warranty at this time; yet the Dealership returned the  
21 Class Vehicle to Plaintiffs without providing any option for repairs.

22         206. The corrosion worsened over time, however, it was not until on or about  
23 June 18, 2020, when Mr. Dotson was at Garrett Automotive having a hitch installed on  
24 the Class Vehicle, that Mr. Dotson observed the extent the frame had corroded.

25         207. Since Plaintiffs were now aware of a possible defect in the Class Vehicle's  
26 frame, on or about July 13, 2020, Mr. Dotson brought their Class Vehicle back to  
27 Garrett Automotive for further inspection. At the conclusion of the inspection, the  
28 technician provided a report to Plaintiff that stated: "Treat Rusted Areas with Rust



1 Most, Fluid Film underneath vehicle (Note...This process will help slow down rust  
2 and corrosion under your vehicle, it will not stop rust corrosion completely).”

3 208. On or about May 24, 2021, Mr. Dotson brought their vehicle to  
4 Independent Auto Center for an oil change where Mr. Dotson was advised by the  
5 technician that they noticed the left rear axle bracket for the control arm had rotted off.

6 209. The next day, Mr. Dotson called Toyota Brand Experience Center and  
7 spoke to a representative who said that there was no recall on the FJ Cruiser frame;  
8 however, the representative provided a case number #210525001234.

9 210. On or about May 25, 2021, Mr. Dotson called NHTSA on the phone about  
10 his concerns about the excessive corrosion the Class Vehicle.

11 211. On or about June 07, 2021, Mr. Dotson brought their vehicle to Brown’s  
12 Toyota with concerns that the vehicle exhibited excessive rust and corrosion. The  
13 technician replaced rear axle housing, link arms, and necessary parts. This repair  
14 ultimately cost Plaintiff \$3,719.23.

15 212. Given the defect is latent and the Class Vehicle’s frame is neither  
16 observable nor reasonable accessible, Plaintiffs had no way to know of the existence  
17 of the defect in their Class Vehicle until, at the earliest, June 18, 2020, when Mr.  
18 Dotson was able to observe the extent of the corrosion while having a hitch installed  
19 on the Class Vehicle.

20 213. To date, Toyota has sent no notification to Plaintiffs about any permanent  
21 repair or modification or change to the maintenance schedule that would either repair  
22 the Defect or prevent the Defect from causing additional damage.

23 214. Plaintiffs’ Class Vehicle continues to experience excessive rust and  
24 corrosion on the frame.

25 215. At all times, Plaintiffs, like all Class Members, have attempted to drive  
26 their Class Vehicle in a foreseeable manner and in the manner in which it was intended  
27 to be used.

1        216. As a result of the Defect, Plaintiff has lost confidence in the ability of their  
2 Class Vehicle to provide them safe and reliable transportation for ordinary and  
3 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
4 a permanent repair or modification to the maintenance schedule that prevents the  
5 Defect from causing damage, Plaintiff's' loss of confidence will continue unabated.

6        **j. Jill Silvernale**

7        217. On or about February 4, 2012, Plaintiff Jill Silvernale (for purposes of this  
8 section, "Plaintiff") purchased her 2007 FJ Cruiser from Signature Automotive Group,  
9 an authorized Toyota dealer located in Benton Harbor, Michigan (for purposes of this  
10 section, the "Dealership").

11        218. Plaintiff purchased her Class Vehicle primarily for personal, family, or  
12 household use.

13        219. Passenger safety and reliability were important factors in Plaintiff's  
14 decision to purchase her Class Vehicle. Before making her purchase, Plaintiff reviewed  
15 brochures and the Vehicle's Monroney sticker, spoke to a representative of the  
16 authorized Toyota Dealership who assured her of the quality, safety, and reliability of  
17 the vehicle, and test drove the vehicle she ultimately purchased. Plaintiff selected and  
18 ultimately purchased her Class Vehicle because the vehicle was represented,  
19 advertised, and marketed as a high-quality vehicle capable of providing safe, quality,  
20 and reliable transportation in all components, including its frame.

21        220. None of the information provided to Plaintiff disclosed any defects with  
22 the frame. Toyota's misstatements and omissions were material to Plaintiff, who was  
23 acting as a reasonable consumer.

24        221. Had Toyota disclosed the Defect before Plaintiff purchased her vehicle,  
25 she would have seen such disclosures and been aware of them. Like all members of the  
26 Class, Plaintiff would not have purchased her Class Vehicle, or she would have paid  
27 less for the vehicle, had she known of the Defect.

1        222. Plaintiff properly maintained and serviced her Class Vehicle according to  
2 industry and maintenance guidelines.

3        223. On or about October 29, 2021, Plaintiff was having a new muffler  
4 installed on her vehicle at Peterson European when the technician advised her that the  
5 frame of her vehicle was “very rusty” with “many holes coming through.” In addition,  
6 Peterson European advised that the gas tank straps were “very rusty” and “close to  
7 breaking.”

8        224. Shortly after, Plaintiff contacted Toyota and spoke to a representative that  
9 stated there was no recall on the FJ frame and they would be unable to assist her.

10       225. On or about March 16, 2022, Plaintiff noticed that the rusty fuel tanks  
11 straps were hanging down to the point where she felt that her vehicle was unsafe to  
12 drive to work. As a result, on March 16, 2022, Plaintiff had to pay \$401.94 out of  
13 pocket to replace both fuel tank straps and hardware.

14       226. To date, Toyota has sent no notification to Plaintiff about any permanent  
15 repair or modification or change to the maintenance schedule that would either repair  
16 the Defect or prevent the Defect from causing additional damage.

17       227. Plaintiff’s Class Vehicle continues to experience excessive rust and  
18 corrosion on the frame.

19       228. At all times, Plaintiff, like all Class Members, has attempted to drive her  
20 Class Vehicle in a foreseeable manner and in the manner in which it was intended to  
21 be used.

22       229. As a result of the Defect, Plaintiff has lost confidence in the ability of her  
23 Class Vehicle to provide her safe and reliable transportation for ordinary and advertised  
24 purposes. Until and unless Toyota fully discloses the Defect or implements a  
25 permanent repair or modification to the maintenance schedule that prevents the Defect  
26 from causing damage, Plaintiff’s loss of confidence will continue unabated.

1           **k. Kyle Blumin**

2           230. On April 24, 2018, Plaintiff Kyle Blumin (for purposes of this section,  
3 “Plaintiff”) purchased his 2013 FJ Cruiser from Larry H. Miller Toyota, an authorized  
4 Toyota dealer located in Murray, Utah (for purposes of this section, the “Dealership”).

5           231. Plaintiff purchased his Class Vehicle primarily for personal, family, or  
6 household use.

7           232. Passenger safety and reliability were important factors in Plaintiff’s  
8 decision to purchase his vehicle. Before making his purchase, Plaintiff reviewed  
9 brochures and the Vehicle’s Monroney sticker, and spoke to a representative of the  
10 authorized Toyota Dealership. Plaintiff selected and ultimately purchased his Class  
11 Vehicle because the vehicle was represented, advertised, and marketed as a high-  
12 quality vehicle capable of providing safe, quality, and reliable transportation in all  
13 components, including its frame.

14           233. None of the information provided to Plaintiff disclosed any defects with  
15 the frame. Toyota’s misstatements and omissions were material to Plaintiff.

16           234. Had Toyota disclosed the Defect before Plaintiff purchased his vehicle,  
17 he would have seen such disclosures and been aware of them. Like all members of the  
18 Class, Plaintiff would have not purchased his Class Vehicle, or would have paid less  
19 for the vehicle, had he known of the Defect.

20           235. Plaintiff properly maintained and serviced his Class Vehicle according to  
21 industry and maintenance guidelines.

22           236. In or about the latter half of 2019, Plaintiff noticed that there were rust  
23 stains on the floor of his garage where he parked his Class Vehicle. Plaintiff then  
24 discovered that the underside of his Vehicle showed signs of rust and corrosion.

25           237. Approximately two months later, Plaintiff contacted the Dealership with  
26 concerns about the excessive rust on his vehicle’s frame and undercarriage. A  
27 representative at the Dealership advised Plaintiff there was nothing that could be done  
28

1 because the Vehicle was outside of its warranty, and advised Plaintiff to call Toyota's  
2 corporate office.

3 238. Plaintiff then called Toyota's customer service department, where the  
4 representative advised that Toyota would not cover the repair because the Vehicle's  
5 warranty had expired.

6 239. A few days later, in an attempt to mitigate the excessive rust and  
7 corrosion, Plaintiff brought his Class Vehicle to Signature Detailing, located in Salt  
8 Lake City, Utah, to have an undercoating applied to the class vehicle due to the  
9 excessive rust and corrosion. Plaintiff paid \$350.00 for the undercoating.

10 240. To date, Toyota has sent no notification to Plaintiff about any permanent  
11 repair or modification or change to the maintenance schedule that would either repair  
12 the Defect or prevent the Defect from causing additional damage.

13 241. Plaintiff's Class Vehicle continues to experience excessive rust and  
14 corrosion on the frame.

15 242. As a result of the Defect, Plaintiff has lost confidence in the ability of his  
16 Class Vehicle to provide him safe and reliable transportation for ordinary and  
17 advertised purposes. Until and unless Toyota fully discloses the Defect or implements  
18 a permanent repair or modification to the maintenance schedule that prevents the  
19 Defect from causing damage, Plaintiff's loss of confidence will continue unabated.

20 **I. All Plaintiffs**

21 243. Prior to Plaintiffs' purchase of their Class Vehicles, Defendants, in wide-  
22 spread marketing campaigns, touted the quality, durability, and safety of the Class  
23 Vehicles, and specifically the quality and benefits of their frames and related  
24 components.

25 244. Although Toyota had the opportunity to disclose the Frame Defect  
26 through its advertising in the owner's manuals, in correspondence sent to Plaintiffs and  
27 Class members, through representations by Toyota dealerships, through vehicle  
28 brochures and other informational documents, or on Toyota's website, Toyota failed

1 to do so prior to Plaintiffs' Vehicle purchases, and Toyota continues to conceal the  
2 Defect to this day.

3 245. As such, Plaintiffs had no way of knowing or learning that such  
4 information regarding the quality, durability, and safety of the Class Vehicles,  
5 including the quality and benefits of their frames and related components, conveyed to  
6 Plaintiffs in Toyota's marketing materials when deciding to purchase their Vehicles,  
7 was false.

8 246. Had Plaintiffs known, or otherwise been made aware, of the Frame Defect  
9 in the Class Vehicles and Toyota's inability to repair or cure it absent replacement of  
10 the frame and other affected components, they would not have purchased their Class  
11 Vehicle or, otherwise, would have paid significantly less for them.

12 247. When Plaintiffs purchased their Class Vehicles, they relied on the  
13 reasonable expectation that their Class Vehicles would be equipped with a frame that  
14 was free from defects, had adequate anti-corrosion properties, and would maintain the  
15 structural integrity of the Vehicle, ensuring they were safe to operate.

16 248. At all relevant times, Plaintiffs have operated their Class Vehicles in a  
17 reasonable and foreseeable manner and as the Vehicles were intended to be used.  
18 However, the Vehicles no longer provide safety and reliability, due to the recurring  
19 problems caused by the Frame Defect.

20 249. Plaintiffs have suffered a concrete and ascertainable loss as a direct and  
21 proximate result of Toyota's omissions and misrepresentations relating to the Frame  
22 Defect in that Plaintiffs overpaid for their Class Vehicles at the time of purchase, the  
23 value of their Class Vehicles has been diminished, and they are left with vehicles that  
24 pose a safety risk to themselves and their occupants as a result of the Frame Defect and  
25 the damage it causes to the structural integrity of the Vehicle.

26 250. Toyota was provided notice of the issues raised in this Complaint, as set  
27 forth in the above paragraphs pertaining to each Plaintiff, and via letter on April 14,  
28

2022. However, Toyota has failed to remedy its unlawful conduct and otherwise cure its breaches of warranty.

**F. The Agency Relationship Between Toyota and Its Network of Authorized Dealerships**

251. In order to sell vehicles to the general public, upon information and belief, Toyota enters into agreements with its nationwide network of authorized dealerships to engage in retail sales with consumers such as Plaintiffs.<sup>13</sup> In return for the exclusive right to sell new, Toyota vehicles, including the Class Vehicles at issue here, the authorized dealerships are also permitted to service and repair these vehicles under the warranties Toyota provides directly to consumers who purchased new vehicles from the authorized dealerships.

252. Accordingly, Toyota's authorized dealerships are Toyota's agents, and the consumers who purchased the Class Vehicles are the third-party beneficiaries of these dealership agreements, which allow the consumers to purchase and service their Class Vehicles locally.

253. Further, Plaintiffs and Class members are the intended beneficiaries of Toyota's implied warranties to its dealers. The dealers were not intended to be the ultimate consumers of the Class Vehicles, and they have no rights under Toyota's implied agreements, which were designed for and intended to benefit the consumers only. Consumers, such as Plaintiffs and Class members, are the true intended beneficiaries of Toyota's implied warranties and may, therefore, avail themselves of those warranties.

254. In promoting, selling, and repairing its defective vehicles, Toyota acts through numerous authorized dealers who act, and represent themselves to the public,

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<sup>13</sup> Plaintiff will be requesting the agreements between Toyota and its nationwide network of authorized dealerships in discovery.

1 as exclusive Toyota representatives and agents. That the dealers act as Toyota's agents  
2 is demonstrated by the following facts:

- 3           a.     The authorized Toyota dealerships complete all services and repairs  
4                   according to Toyota's instructions, which Toyota issues to its  
5                   authorized dealerships through service manuals, TSBs, technical  
6                   tips, and other documents;
- 7           b.     The warranties provided by Toyota for the defective vehicles direct  
8                   consumers to take their vehicles to authorized dealerships for  
9                   repairs or services;
- 10          c.     Toyota dictates the nature and terms of the purchase contracts  
11                  entered into between its authorized dealers and consumers;
- 12          d.     Toyota controls the way in which its authorized dealers can respond  
13                  to complaints and inquiries concerning defective vehicles, and the  
14                  dealerships are able to perform repairs under warranty only with  
15                  Toyota's authorization; and
- 16          e.     Toyota has entered into agreements and understandings with its  
17                  authorized dealers pursuant to which it authorizes and exercises  
18                  substantial control over the operations of its dealers' interaction  
19                  with the public; and

20           255. Toyota gives its authorized dealerships actual or apparent authority to act  
21 on its behalf; thus, the authorized dealerships are agents of Toyota. Plaintiffs and each  
22 of the Class members have had sufficient direct dealings with either Toyota or its agent  
23 dealerships to establish privity of contract between Toyota, on the one hand, and  
24 Plaintiffs and each Class member, on the other hand. This establishes privity with  
25 respect to the implied warranties between Plaintiff and Toyota.

26 **G. Fraudulent Concealment Allegations**

27           256. Absent discovery, Plaintiffs are unable through reasonable investigation  
28 to obtain the true names and identities of those individuals at Toyota responsible for



1 disseminating false and deceptive marketing materials and information regarding the  
2 Class Vehicles. Conversely, Toyota necessarily is in possession of, or has access to, all  
3 of this information.

4         257. Plaintiffs' claims arise out of Toyota's false, deceptive, and fraudulent  
5 concealment of the Frame Defect and the premature and excessive rusting and  
6 corrosion it causes, and its representations about the quality, durability, and value of  
7 the Class Vehicles.

8         258. To the extent that Plaintiffs' claims arise from Toyota's fraudulent  
9 concealment, there is no one document or communication, and no one interaction, upon  
10 which Plaintiffs base their claims. Plaintiffs allege that at all relevant times, including  
11 specifically at the time they purchased their Class Vehicles, Toyota knew, or was  
12 reckless in not knowing, of the Frame Defect; Toyota was under a duty to disclose the  
13 Frame Defect based upon its exclusive knowledge of it, its affirmative representations  
14 about it, and its concealment of it, but Toyota never disclosed the Frame Defect to  
15 Plaintiffs or the public at any time or place or in any manner. Instead, Toyota touted in  
16 its press releases, sales brochures, and other marketing material the durability of the  
17 Class Vehicles. Had Toyota disclosed the existence of the Frame Defect in Class  
18 Vehicles, Plaintiffs and Class Members would not have purchased or leased the Class  
19 Vehicles, or they would have paid less for them. Had Toyota disclosed the existence  
20 of the Frame Defect in Class Vehicles the market price of the Class Vehicles would  
21 have been lower. Accordingly, Plaintiffs and Class Members paid a premium reflecting  
22 the market's assumption that the Class Vehicles did not have a Frame Defect.

23         259. Plaintiffs make the following specific fraud allegations with as much  
24 specificity as possible, although they do not have access to information necessarily  
25 available only to Toyota:

26                 a. **Who:** Toyota actively concealed the Frame Defect from Plaintiffs  
27 and Class members while simultaneously touting the quality and durability of the Class  
28

1 Vehicles. Plaintiffs are unaware of, and are therefore unable to identify, the true names  
2 and identities of those specific individuals at Toyota responsible for such decisions.

3           b.       ***What:*** Toyota knew, or was reckless or negligent in not knowing,  
4 that the Class Vehicles contain the Frame Defect. Toyota concealed the Frame Defect  
5 and made contrary representations about the quality, durability, and other attributes of  
6 the Class Vehicles in its advertisements, sales brochures, marketing materials, and  
7 other communications.

8           c.       ***When:*** Toyota concealed material information regarding the Frame  
9 Defect at all relevant times and made representations about the quality, durability, and  
10 other attributes of the Class Vehicles starting no later than 2004, or at the subsequent  
11 introduction of certain models of Class Vehicles to the market, continuing through the  
12 time of sale/certification for pre-owned sale, and on an ongoing basis, and continuing  
13 to this day. On information and belief, Toyota has not disclosed the truth about the  
14 Frame Defect in the Class Vehicles to anyone outside of Toyota. In addition, Toyota  
15 has never taken any action to inform consumers about the true nature of the Frame  
16 Defect in Class Vehicles. Additionally, when consumers have brought their Class  
17 Vehicles to Toyota complaining of the excessive and premature frame corrosion and  
18 rust, Toyota has denied any knowledge of, or responsibility for, the Frame Defect,  
19 claimed that the corrosion is “normal,” and required consumers to pay out-of-pocket  
20 expenses to perform inadequate repairs or replace their Class Vehicles’ frames.

21           d.       ***Where:*** Toyota concealed material information regarding the true  
22 nature of the Frame Defect in the advertisements, press releases, sales brochures,  
23 marketing materials, and other communications it had with Plaintiffs and Class  
24 members and made contrary representations about the quality and durability of the  
25 Class Vehicles. Plaintiffs are aware of no document, communication, or other place or  
26 thing in which Toyota disclosed the truth about the Frame Defect in the Class Vehicles  
27 to anyone outside of Toyota. Such information is not adequately disclosed in any sales  
28

documents, displays, advertisements, warranties, or owner's manuals, or on Toyota's website.

e. ***How:*** Toyota concealed the Frame Defect from Plaintiffs and Class members and made representations about the quality, durability, and other attributes of the Class Vehicles. Toyota actively concealed the truth about the existence and nature of the Frame Defect from Plaintiffs and Class members, at all times, even though it knew about the Frame Defect and knew that information about the Frame Defect would be important to a reasonable consumer. Toyota also promised in its marketing materials that the Class Vehicles have qualities that they do not have, and moreover, made representations in its warranties that it knew were false, misleading, and deceptive.

f. ***Why:*** Toyota actively concealed material information about the Frame Defect in the Class Vehicles for the purpose of inducing Plaintiffs and Class members to purchase the Vehicles instead of competitors' vehicles, and to save money on production and materials, and it made representations about the quality and durability of the Vehicles. Had Toyota disclosed the truth, for example, in its advertisements or other materials or communications, Plaintiffs (and reasonable consumers, including Class members) would have been aware of the Frame Defect, and they would not have bought the Class Vehicles or would have paid less for them.

## **V. TOLLING OF THE STATUTE OF LIMITATIONS**

### **A. Fraudulent Concealment Tolling**

260. Toyota has known of the Frame Defect in the Class Vehicles since at least 2006, and has concealed from, or failed to notify, Plaintiffs, Class members, and the public of the full and complete nature of the Frame Defect, even when directly asked about it by Plaintiffs and Class members during communications with Toyota, as well as its customer service representatives, authorized dealerships, and service centers. Toyota continues to conceal the Frame Defect to this day.

261. Indeed, when consumers have brought their Class Vehicles to Toyota complaining of the excessive and premature frame corrosion and rust, Toyota has

1 denied any knowledge of, or responsibility for, the Frame Defect, claimed that the  
2 corrosion is “normal,” did not offer repairs, even when Class Vehicles were under  
3 warranty, and ultimately required consumers to pay out-of-pocket expenses to perform  
4 repairs that did not cure the Frame Defect or replace their Class Vehicles’ frames.

5 262. Any applicable statute of limitation has, thus, been tolled by Toyota’s  
6 knowledge, active concealment, and denial of the facts alleged herein, which behavior  
7 is ongoing.

8 **B. Estoppel**

9 263. Toyota was, and is, under a continuous duty to disclose to Plaintiffs and  
10 Class members the true character, quality, and nature of the Class Vehicles. Toyota  
11 actively concealed – and continues to conceal – the true character, quality, and nature  
12 of the Class Vehicles and knowingly made representations about the quality and  
13 durability of the Vehicles. Plaintiffs and Class members reasonably relied upon  
14 Toyota’s knowing and affirmative representations and/or active concealment of these  
15 facts. Based on the foregoing, Toyota is estopped from relying on any statutes of  
16 limitation in defense of this action.

17 **C. Discovery Rule**

18 264. Certain causes of action alleged herein did not accrue until Plaintiffs and  
19 Class members discovered that their Class Vehicles contained the Frame Defect.

20 265. However, Plaintiffs and Class members had no reasonable ability to  
21 discern on their own that the Class Vehicles were defective until—at the earliest—after  
22 the Frame Defect caused their Vehicles’ frame and related components to fail. Indeed,  
23 the premature and excessive corrosion affecting the Class Vehicles’ frames often does  
24 not spread to the Vehicles’ exterior panels and cannot be observed at eye-level and,  
25 when it can be observed, the corrosion appears to reasonable consumers as surface  
26 corrosion. In fact, most Class members become aware of the extreme and premature  
27 corrosion only after being in an accident or when a wholly-unrelated part was being  
28 repaired and a mechanic or Toyota service representative is able to observe the

1 corrosion when the Vehicle is placed on a hydraulic lift. Plaintiffs and Class members,  
2 obviously, do not have this capability and, in any event, it is not reasonable to expect  
3 that Plaintiffs and Class members would continuously monitor the undercarriage of  
4 their Vehicles.

5 266. Even then, Plaintiffs and Class members had no reasonable reason to  
6 know about the corrosion and rust caused by a defect in the Class Vehicles because of  
7 Toyota's active concealment of the Frame Defect. Not only did Toyota fail to notify  
8 Plaintiffs or Class members about the Frame Defect, Toyota, in fact, denied any  
9 knowledge of, or responsibility for, the Defect when directly asked about it, and  
10 claimed that the corrosion observed on the Class Vehicle's was "normal" and the frame  
11 was operating as intended and, thus, did not require repair.

12 267. Thus, Plaintiffs and Class members were not reasonably able to discover  
13 the Frame Defect until after they had purchased the Class Vehicles, despite their  
14 exercise of due diligence, and their causes of action did not accrue until, at earliest,  
15 they discovered that the Defect was causing premature and excessive corrosion on their  
16 Vehicles.

## 17 VI. CLASS ALLEGATIONS

18 268. Plaintiffs bring this action pursuant to Rule 23(a) and (b)(2)-(3) of the  
19 Federal Rules of Civil Procedure on behalf of themselves and all others similarly  
20 situated as members of the following Nationwide Class and State Classes defined as:

### 21 Nationwide Class:

22 All persons or entities in the United States (including its  
23 territories and the District of Columbia) that purchased a  
24 Class Vehicle. Class Vehicles consist of the Toyota FJ  
Cruiser, model years 2007-2014.

### 25 Illinois Class:

26 All persons or entities in Illinois that purchased a Class  
27 Vehicle or that purchased a Class Vehicle and reside in  
28 Illinois.

1                   **Indiana Class:**

2                   All persons or entities in Illinois that purchased a Class  
3                   Vehicle or that purchased a Class Vehicle and reside in  
4                   Illinois.

5                   **Maryland Class:**

6                   All persons or entities in Maryland that purchased a Class  
7                   Vehicle or that purchased a Class Vehicle and reside in  
8                   Maryland.

9                   **Massachusetts Class:**

10                  All persons or entities in Massachusetts that purchased a  
11                  Class Vehicle or that purchased a Class Vehicle and reside  
12                  in Massachusetts.

13                  **Michigan Class:**

14                  All persons or entities in Michigan that purchased a Class  
15                  Vehicle or that purchased a Class Vehicle and reside in  
16                  Michigan.

17                  **New York Class:**

18                  All persons or entities in New York that purchased a Class  
19                  Vehicle or that purchased a Class Vehicle and reside in New  
20                  York.

21                  **New Jersey Class:**

22                  All persons or entities in New Jersey that purchased a Class  
23                  Vehicle or that purchased a Class Vehicle and reside in New  
24                  Jersey.

25                  **Pennsylvania Class:**

26                  All persons or entities in Utah that purchased a Class Vehicle  
27                  or that purchased a Class Vehicle and reside in Pennsylvania.

28                  **Utah Class:**

                  All persons or entities in Utah that purchased a Class Vehicle  
                  or that purchased a Class Vehicle and reside in Utah.

269. Excluded from the Class are Defendants; their employees, officers,  
directors, legal representatives, heirs, successors, and wholly or partly owned

1 subsidiaries or affiliates of Toyota; Toyota's dealers; Class Counsel and their  
2 employees; the judicial officers and their immediate family members and associated  
3 court staff assigned to this case; and all persons within the third degree of relationship  
4 to any such persons.

5 270. Certification of Plaintiffs' claims for Class-wide treatment is appropriate  
6 because Plaintiffs can prove the elements of their claims on a Class-wide basis using  
7 the same evidence as would be used to prove those elements in individual actions  
8 alleging the same claim.

9 271. This action has been brought and may be properly maintained on behalf  
10 of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

11 272. **Numerosity**. Rule 23(a)(1) of the Federal Rules of Civil Procedure: The  
12 members of the Class are so numerous and geographically dispersed that individual  
13 joinder of all Class members is impracticable. While Plaintiffs are informed and  
14 believe that there are at least thousands of Class members, the precise number of Class  
15 members is unknown to Plaintiffs but may be ascertained from Toyota's books and  
16 records. Class members may be notified of the pendency of this action by recognized,  
17 Court-approved notice dissemination methods, which may include U.S. mail,  
18 electronic mail, Internet postings, and/or published notice.

19 273. **Commonality and Predominance**. Rules 23(a)(2) and (b)(3) of the  
20 Federal Rules of Civil Procedure: This action involves common questions of law and  
21 fact, which predominate over any questions affecting individual Class members,  
22 including, but not limited to:

- 23 a. whether Toyota engaged in the conduct alleged herein;
- 24 b. whether Toyota designed, manufactured, advertised, marketed,  
25 distributed, sold, or otherwise placed Class Vehicles into the stream of commerce in  
26 the United States;
- 27 c. whether Toyota designed, manufactured, marketed, and distributed  
28 Class Vehicles with a Frame Defect;

1           d.     whether Plaintiffs and Class members overpaid for their Class  
2 Vehicles and/or did not receive the benefit of their bargains;

3           e.     whether Plaintiffs and Class members are entitled to damages and  
4 other monetary relief and, if so, in what amount;

5           f.     whether Toyota's alleged conduct constitutes the use or  
6 employment of an unconscionable commercial practice, deception, fraudulent  
7 concealment, false pretense, false promise, and misrepresentation within the meaning  
8 of the applicable state consumer fraud statutes;

9           g.     whether Toyota has violated its express warranties to Plaintiffs and  
10 Class members;

11          h.     whether Toyota has been unjustly enriched so that its receipt and  
12 retention of the profits derived from Plaintiffs and Class members is inequitable;

13          i.     whether Toyota actively concealed the Frame Defect in order to  
14 maximize profits to the detriment of Plaintiffs and Class members; and

15          j.     such other common factual and legal issues as are apparent from  
16 the allegations and causes of action asserted in this Complaint.

17       274. **Typicality**. Rule 23(a)(3) of the Federal Rules of Civil Procedure:  
18 Plaintiffs' claims are typical of the other Class members' claims because, among other  
19 things, all Class members were comparably injured through Toyota's wrongful  
20 conduct as described above. All claims seek recovery on the same legal theories and  
21 are based upon Toyota's common course of conduct.

22       275. **Adequacy**. Rule 23(a)(4) of the Federal Rules of Civil Procedure:  
23 Plaintiffs are adequate Class representatives because their interests do not conflict with  
24 the interests of the other members of the Class they seek to represent; Plaintiffs have  
25 retained counsel competent and experienced in complex class action litigation; and  
26 Plaintiffs intend to prosecute this action vigorously. The Class' interests will be fairly  
27 and adequately protected by Plaintiffs and their counsel.  
28



276. **Declaratory Relief.** Rule 23(b)(2) of the Federal Rules of Civil Procedure: Toyota has acted or refused to act on grounds generally applicable to Plaintiffs and Class members, thereby making appropriate declaratory relief, with respect to each Class as a whole.

277. **Superiority.** Rule 23(b)(3) of the Federal Rules of Civil Procedure: A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Toyota, so it would be impracticable for Class members to individually seek redress for Toyota's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## VII. CLAIMS

### A. Claims Brought on Behalf of the Nationwide Class

## COUNT I

## FRAUDULENT CONCEALMENT

278. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

279. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class under the common law of California. In the alternative, Plaintiffs bring this claim on behalf of themselves and each State Class under the law of each state in which Plaintiffs and Class members purchased their Class Vehicles.

1       280. Toyota fraudulently concealed and suppressed material facts concerning  
2 the quality, durability, and safety of the Class Vehicles, including their frames, as well  
3 as the existence of the Frame Defect.

4       281. Despite representing in its advertisements, sales brochures, and other  
5 marketing materials that the Class Vehicles and their frames were durable and of high  
6 quality, Toyota knew when it manufactured, marketed, and sold the Vehicles that they  
7 were equipped with frames that lacked adequate rust corrosion protection and were  
8 prone to excessive and premature rust corrosion, thereby subjecting the Vehicles'  
9 occupants to a significant safety risk.

10       282. Toyota failed to disclose these facts to consumers at the time it  
11 manufactured, marketed, and sold the Class Vehicles. Toyota did not disclose the  
12 Defect in its advertisements, sales brochures, or other marketing material. Toyota  
13 knowingly and intentionally engaged in this concealment in order to boost sales and  
14 revenue, maintain its competitive edge in the automobile market, and obtain windfall  
15 profit. Through its active concealment and/or suppression of these material facts,  
16 Toyota sought to increase consumer confidence in the Class Vehicles, and to falsely  
17 assure purchasers and lessors of the same that the Vehicles were of sound quality and  
18 that Toyota was a reputable manufacturer that stands behind the automobiles it  
19 manufactures. Toyota engaged in this behavior to protect its profits, avoid warranty  
20 replacements, avoid recalls that would impair the brand's image, cost it money, and  
21 undermine its competitiveness in the automobile industry.

22       283. Plaintiffs and Class members were unaware, and could not reasonably  
23 discover on their own, that Toyota's representations were false and misleading, or that  
24 it had omitted material facts relating to the Class Vehicles.

25       284. Toyota had a duty to disclose, rather than conceal and suppress, the full  
26 scope and extent of the Frame Defect because:

27           a. Toyota had exclusive or far superior knowledge of the Frame  
28 Defect and concealment thereof;

1           b.     the facts regarding the Frame Defect and concealment thereof were  
2 known and/or accessible only to Toyota;

3           c.     Toyota knew that Plaintiffs and Class members did not know about,  
4 or could not reasonably discover, the Frame Defect and concealment thereof; and

5           d.     Toyota made representations and assurances about the qualities of  
6 the Class Vehicles and their frames that were misleading, deceptive, and incomplete  
7 without the disclosure of the fact that the Class Vehicles were equipped with frames  
8 that lacked adequate rust corrosion protection and were prone to excessive and  
9 premature rust corrosion, thereby subjecting the Vehicles' occupants to a significant  
10 safety risk.

11         285. These omitted and concealed facts were material because a reasonable  
12 consumer would rely on them in deciding to purchase the Class Vehicles, and because  
13 they substantially reduced the value of the Vehicles purchased by Plaintiffs and Class  
14 members. Further, the Frame Defect is material because it poses a safety threat to both  
15 drivers and occupants of the Vehicles and causes some Vehicles to no longer be  
16 drivable, having failed to pass safety check(s).

17         286. Toyota intentionally and actively concealed and suppressed these material  
18 facts to falsely assure consumers that their Class Vehicles were safe and free from  
19 known defects, as represented by Toyota and reasonably expected by consumers.

20         287. Plaintiffs and Class members were unaware of these omitted material  
21 facts and would have paid less for the Class Vehicles, or would not have purchased  
22 them at all, if they had known of the concealed and suppressed facts. Plaintiffs' and  
23 Class members' actions in purchasing the Class Vehicles were justified, as Toyota was  
24 in exclusive control of the material facts, and such facts were not known or reasonably  
25 knowable to the public, Plaintiffs, or Class members.

26         288. As a direct and proximate result of Toyota's deceit and fraudulent  
27 concealment, including its intentional suppression of true facts, Plaintiffs and Class  
28

1 members suffered injury. Each Plaintiff purchased a Class Vehicle that suffers from a  
2 defect that diminishes the Vehicle's value and poses a safety risk to its occupants.

3 289. Plaintiffs overpaid for their Class Vehicles by reason of Toyota's  
4 representations regarding the Vehicles, including their frames, and concealment of, and  
5 failure to disclose, the Frame Defect. Plaintiffs and Class members have also paid  
6 substantial money to (unsuccessfully) repair the Frame Defect and/or have their Class  
7 Vehicles' frames replaced.

8 290. Accordingly, Toyota is liable to the Nationwide Class and/or State Classes  
9 for their damages in an amount to be proven at trial.

10 291. Toyota's acts were done deliberately, with intent to defraud, and in  
11 reckless disregard of Plaintiffs' and the Class members' rights. Toyota's conduct  
12 warrants an assessment of punitive damages in an amount sufficient to deter such  
13 conduct in the future, which amount is to be determined according to proof.

## 14 **COUNT II**

### 15 **UNJUST ENRICHMENT**

16 292. Plaintiffs reallege and incorporate by reference all preceding allegations  
17 as though fully set forth herein.

18 293. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
19 Class under the common law of California. In the alternative, Plaintiffs bring this claim  
20 on behalf of themselves and each State Class under the law of each state in which  
21 Plaintiffs and Class members purchased their Class.

22 294. As a direct and proximate result of Toyota's misrepresentations regarding  
23 the Class Vehicles and failure to disclose the Frame Defect, Defendants have profited  
24 through the sale of the Class Vehicles. Although the Class Vehicles were purchased  
25 through the Defendants' agents, the money from the Class Vehicle sales flows directly  
26 back to Defendants.

295. Additionally, as a direct and proximate result of Defendants' failure to disclose known Defects in the Class Vehicles, Plaintiff and Class members have vehicles that require repeated, high-cost repairs.

296. Plaintiffs and Class Members conferred a benefit on Toyota by paying money for repeated, high-cost repairs to the defective frame that earned interest or otherwise added to the Defendants' profits when said money should have remained with Plaintiffs and Class Members.

297. The Defendants had knowledge of the benefit conferred on them by Plaintiffs and Class members. Specifically, Defendants knew or should have known that Plaintiffs and Class members were paying them for repeated, high-cost repairs to the frame in connection with the Frame Defect, which should have been repaired by Toyota at no cost.

298. Defendants voluntarily accepted and retained the benefit conferred on them by Plaintiffs and Class members by accepting payment for repeated, high-cost repairs to the defective frames on the Class Vehicles.

299. The circumstances are such that it would be inequitable for Defendants to retain the benefit without paying the value thereof to Plaintiffs and Class Members.

### COUNT III

## DECLARATORY RELIEF

300. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

301. Plaintiffs brings this claim on behalf of themselves and the Nationwide Class.

302. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

303. Defendants marketed, distributed, and sold the Class Vehicles equipped with frames prone to exhibiting excessive rust corrosion and perforation on account of

1 Defendants' failure to treat the frames on such vehicles with adequate rust corrosion  
2 protection.

3 304. Accordingly, Plaintiffs and Class Members seek entry of the following  
4 declarations: (1) the Class Vehicles lack adequate rust corrosion protection and are  
5 defective; (2) all persons who purchased the Class Vehicles are to be provided the best  
6 practicable notice of the Defect, which cost shall be borne by Defendants; and (3)  
7 Defendants must establish an inspection, repair, and replacement program and protocol  
8 and notify Class members of such program, pursuant to which Defendants, including  
9 its authorized representatives, and at no cost to Class members, will inspect, upon  
10 request, Class members' Class Vehicles for frame rust corrosion, treat the Class  
11 Vehicles that have not exhibited rust corrosion with adequate rust corrosion protection,  
12 and repair or replace the frames on the Class Vehicles that have experienced frame rust  
13 corrosion.

14 **B. Claims Brought on Behalf of the State Classes**

15 **1. Illinois Class**

16 **COUNT IV**

17 **VIOLATION OF ILLINOIS CONSUMER FRAUD AND**  
18 **DECEPTIVE BUSINESS PRACTICES ACT**  
19 **(815 ILCS 505/1, *et seq.* and 510/2)**

20 305. Plaintiffs incorporate by reference each preceding paragraph as though  
21 fully set forth herein.

22 306. Plaintiff Elliot Nazos (for the purposes of this section, "Plaintiff") brings  
23 this action on behalf of himself and the Illinois Class against Toyota.

24 307. Toyota, Plaintiff, and the Illinois Class members are "persons" within the  
25 meaning 815 ILCS 505/1(c) and 510/1(5). Plaintiffs and the Illinois State Class  
26 members are "consumers" within the meaning of 815 ILCS 505/1(e).

27 308. The Illinois Consumer Fraud and Deceptive Practices Act ("Illinois  
28 CFA") makes unlawful "unfair or deceptive acts or practices, including but not limited

1 to the use or employment of any deception, fraud, false pretense, false promise,  
2 misrepresentation or the concealment, suppression or omission of any material fact,  
3 with intent that others rely upon the concealment, suppression or omission of such  
4 material fact ... in the conduct of trade or commerce ... whether any person has in fact  
5 been misled, deceived or damaged thereby.” 815 ILCS 505/2. The Illinois CFA further  
6 makes unlawful deceptive trade practices undertaken in the course of business. 815  
7 ILCS 510/2.

8         309. In the course of its business, Toyota, through their agents, employees,  
9 and/or subsidiaries, violated the Illinois CFA by knowingly misrepresenting and  
10 intentionally concealing material facts regarding the quality of the Class Vehicles, the  
11 quality and benefits of the frames used on the Class Vehicles, the existence of the  
12 Frame Defect, and Toyota’s ability to render a repair to cure the Defect.

13         310. Specifically, in marketing, offering for sale, and selling/leasing the  
14 defective Class Vehicles, Toyota engaged in one or more of the following unfair or  
15 deceptive acts or practices prohibited by 815 ILCS 505/2 and 510/2:

- 16             a. Causing likelihood of confusion or of misunderstanding as to the  
17 approval or certification of the Class Vehicles;
- 18             b. Representing that the Class Vehicles have approval, characteristics,  
19 uses, or benefits that they do not have;
- 20             c. Representing that the Class Vehicles are of a particular standard,  
21 quality, and grade when they are not;
- 22             d. Advertising the Class Vehicles with the intent not to sell them as  
23 advertised;
- 24             e. Engaging in other conduct which created a likelihood of confusion  
25 or of misunderstanding; and/or
- 26             f. Using or employing deception, fraud, false pretense, false promise  
27 or misrepresentation, or the concealment, suppression or omission  
28 of a material fact with intent that others rely upon such

1 concealment, suppression or omission, in connection with the  
2 advertisement and sale of the Class Vehicles, whether or not any  
3 person has in fact been misled, deceived or damaged thereby.

4 311. Toyota's scheme and concealment of the true characteristics of the Class  
5 Vehicles were material to Plaintiff and the Illinois Class members, and Toyota  
6 misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff  
7 and the Illinois Class members would rely on the misrepresentations, concealments,  
8 and omissions. Had they known the truth, Plaintiff and the Illinois Class members  
9 would not have purchased the Class Vehicles, or would have paid significantly less for  
10 them.

11 312. Plaintiff and the Illinois Class members had no way of discerning that  
12 Toyota's representations were false and misleading, or otherwise learning the facts that  
13 Toyota had concealed and/or failed to disclose.

14 313. Toyota had an ongoing duty to Plaintiff and the Illinois Class members to  
15 refrain from unfair and deceptive practices under the Illinois CFA in the course of its  
16 business. Specifically, Toyota owed Plaintiff and the Illinois Class members a duty to  
17 disclose all the material facts concerning the Class Vehicles because it possessed  
18 exclusive knowledge, it intentionally concealed such material facts from Plaintiff and  
19 the Illinois Class members, and/or it made misrepresentations that were rendered  
20 misleading because they were contradicted by withheld facts.

21 314. Plaintiff and the Illinois Class members suffered ascertainable loss and  
22 actual damages as a direct and proximate result of Toyota's concealment,  
23 misrepresentations, and/or failure to disclose material information.

24 315. Toyota's violations present a continuing risk to Plaintiff and the Illinois  
25 Class, as well as to the general public. As such, Toyota's unlawful acts and practices  
26 complained of herein affect the public interest.

27 316. Pursuant to 815 ILCS 505/10a(a) and 510/3, Plaintiff and the Illinois  
28 Class seek an order enjoining Toyota's unfair and/or deceptive acts or practices, and



1 awarding damages, punitive damages, and any other just and proper relief available  
2 under the Illinois CFA.

3 **COUNT V**

4 **BREACH OF IMPLIED WARRANTY**

5 **(810 ILL. COMP. STAT. 5/2-314, 5/2-315)**

6 317. Plaintiffs incorporate by reference each preceding paragraph as though  
7 fully set forth herein.

8 318. Plaintiff Elliot Nazos (for the purposes of this section, “Plaintiff”) brings  
9 this action on behalf of himself and the Illinois Class against Toyota.

10 319. Plaintiff and the Illinois Class members are “buyers” within the meaning  
11 of 810 ILCS 5/2-103(1)(a).

12 320. The Toyota Defendants are and were at all relevant times “merchants”  
13 with respect to motor vehicles, 810 ILCS 5/2-104(1), and “sellers” of motor vehicles  
14 under 5/2-103(1)(d).

15 321. The Class Vehicles were at all relevant times “goods” within the meaning  
16 of 810 ILCS §§ 5/2-105(1).

17 322. A warranty that the Class Vehicles were in merchantable condition and fit  
18 for the ordinary purpose for which such goods are used is implied by law pursuant to  
19 810 ILCS 5/2-314 and 5/2-315.

20 323. The Class Vehicles did not comply with the implied warranty of  
21 merchantability because, at the time of sale and at all times thereafter, they were  
22 defective and not in merchantable condition, would not pass without objection in the  
23 trade, and were not fit for the ordinary purpose for which vehicles were used.  
24 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
25 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
26 subjecting the Vehicles’ occupants to a significant safety risk.

27 324. Defendants’ warranty disclaimers, exclusions, and limitations, to the  
28 extent that they may be argued to apply, were, at the time of sale, and continue to be

1 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
2 Defendants knew when they first made these warranties and their limitations that the  
3 defect existed and that the warranties would expire before a reasonable consumer  
4 would notice or observe the defect. Defendants also failed to take necessary actions to  
5 adequately disclose or cure the defect after the existence of the defect came to the  
6 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
7 its breaches of warranty, and consumers' losses.

8         325. Under these circumstances, it would be futile to enforce any informal  
9 resolution procedures or give Defendants any more time to cure the defect, its breaches  
10 of warranty, or otherwise attempt to resolve or address Plaintiff and the Illinois Class  
11 members' claims.

12         326. As a direct and foreseeable result of the defect in the Class Vehicles'  
13 frames, Plaintiff and the Illinois Class members suffered diminution in the value of the  
14 Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing  
15 their defective Class Vehicles, costs associated with arranging and obtaining  
16 alternative means of transportation, and other incidental and consequential damages  
17 recoverable under the law.

18         327. Plaintiff and Illinois members have had sufficient direct dealings with  
19 either the Toyota or its agents (dealerships) to establish privity of contract between  
20 Plaintiff and the Illinois Class members.

21         328. Notwithstanding this, privity is not required in this case because Plaintiff  
22 and the Illinois Class members are intended third-party beneficiaries of contracts  
23 between Toyota and its dealers; specifically, they are the intended beneficiaries of  
24 Toyota's implied warranties. The dealers were not intended to be the ultimate  
25 consumers of the Class Vehicles; the warranty agreements were designed for and  
26 intended to benefit the ultimate consumers only. Finally, privity is also not required  
27 because Plaintiff's and Illinois Class members' Class Vehicles are inherently  
28 dangerous due to the Frame Defect and nonconformities.

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1 other supplier shall know or have reason to know that such representation was false.”  
2 Ind. Code § 24-5-0.5-3.

3 334. In the course of their business, the Toyota Defendants, through their  
4 agents, employees, and/or subsidiaries, engaged in one or more of the following unfair  
5 or deceptive acts or practices as defined in Ind. Code § 24-5-0.5-3:

- 6 a. Causing likelihood of confusion or of misunderstanding as to the  
7 approval or certification of the Class Vehicles;
- 8 b. Representing that the Class Vehicles have approval,  
9 characteristics, uses, or benefits that they do not have;
- 10 c. Representing that the Class Vehicles are of a particular standard,  
11 quality and grade when they are not;
- 12 d. Advertising the Class Vehicles with the intent not to sell them as  
13 advertised;
- 14 e. Engaging in other conduct which created a likelihood of  
15 confusion or of misunderstanding; and/or
- 16 f. Using or employing deception, fraud, false pretense, false promise  
17 or misrepresentation, or the concealment, suppression or omission  
18 of a material fact with intent that others rely upon such  
19 concealment, suppression or omission, in connection with the  
20 advertisement and sale of the Class Vehicles, whether or not any  
21 person has in fact been misled, deceived or damaged thereby.

22 335. Toyota’s scheme and concealment of the true characteristics of the Class  
23 Vehicles were material to Plaintiff and the Indiana Class members, and Toyota  
24 misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff  
25 and the Indiana Class members would rely on the misrepresentations, concealments,  
26 and omissions. Had they known the truth, Plaintiff and the Indiana Class members  
27 would not have purchased the Class Vehicles, or would have paid significantly less for  
28 them.

336. Plaintiff and the Indiana Class members had no way of discerning that Toyota's representations were false and misleading, or otherwise learning the facts that Toyota had concealed and/or failed to disclose.

337. Toyota had an ongoing duty to Plaintiff and the Indiana Class members to refrain from unfair and deceptive practices under the Indiana DCSA in the course of its business. Specifically, Toyota owed Plaintiff and the Indiana Class members a duty to disclose all the material facts concerning the Class Vehicles because it possessed exclusive knowledge, it intentionally concealed such material facts from Plaintiff and the Indiana Class members, and/or it made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

338. Plaintiff and the Indiana Class members suffered ascertainable loss and actual damages as a direct and proximate result of Toyota's concealment, misrepresentations, and/or failure to disclose material information.

339. Toyota's violations present a continuing risk to Plaintiff and the Indiana Class, as well as to the general public. As such, Toyota's unlawful acts and practices complained of herein affect the public interest.

340. Pursuant to Ind. Code § 24-5-0.5-4, Plaintiff and the Indiana Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, and awarding damages, punitive damages, and any other just and proper relief available under the Indiana DCSA.

341. On March 25, 2022, a notice letter was sent to Toyota complying with Ind. Code § 24-5-0.5-5(a). Plaintiff seeks all damages and relief to which Plaintiff and the Indiana Class are entitled.

## COUNT VII

## BREACH OF IMPLIED WARRANTY

**(IND. CODE §§ 26-1-2-314 and 26-1-2-315)**

342. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1        343. Plaintiff Jeffrey Cochran (for the purposes of this section, “Plaintiff”)  
2 brings this action on behalf of himself and the Indiana Class against Toyota.

3        344. Plaintiff and the Indiana Class members are “buyers” within the meaning  
4 of Ind. Code § 26-1-2-103(1)(a).

5        345. The Toyota Defendants are and were at all relevant times “merchants”  
6 with respect to motor vehicles under Ind. Code §§ 26-1-2.1-103(3), and “sellers” of  
7 motor vehicles under § 26-1-2-103(1)(d).

8        346. The Class Vehicles were at all relevant times “goods” within the meaning  
9 of Ind. Code §§ 26-1-2.1-103(1)(h) and 26-1-2-105(1).

10       347. A warranty that the Class Vehicles were in merchantable condition and fit  
11 for the ordinary purpose for which such goods are used is implied by law pursuant to  
12 Ind. Code §§ 26-1-2-314, 26-1-2-315.

13       348. The Class Vehicles did not comply with the implied warranty of  
14 merchantability because, at the time of sale and at all times thereafter, they were  
15 defective and not in merchantable condition, would not pass without objection in the  
16 trade, and were not fit for the ordinary purpose for which vehicles were used.  
17 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
18 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
19 subjecting the Vehicles’ occupants to a significant safety risk.

20       349. Defendants’ warranty disclaimers, exclusions, and limitations, to the  
21 extent that they may be argued to apply, were, at the time of sale, and continue to be  
22 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
23 Defendants knew when they first made these warranties and their limitations that the  
24 defect existed and that the warranties would expire before a reasonable consumer  
25 would notice or observe the defect. Defendants also failed to take necessary actions to  
26 adequately disclose or cure the defect after the existence of the defect came to the  
27 public’s attention and sat on its reasonable opportunity to cure or remedy the defect,  
28 its breaches of warranty, and consumers’ losses.

350. Under these circumstances, it would be futile to enforce any informal resolution procedures or give Defendants any more time to cure the defect, its breaches of warranty, or otherwise attempt to resolve or address Plaintiff and the Indiana Class members' claims.

351. As a direct and foreseeable result of the defect in the Class Vehicles' frames, Plaintiff and Indiana Class members suffered diminution in the value of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their defective Class Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

352. Plaintiff and Indiana Class members have had sufficient direct dealings with either the Toyota or its agents (dealerships) to establish privity of contract between Plaintiffs and the Class members.

353. Notwithstanding this, privity is not required in this case because Plaintiff and Indiana Class members are intended third-party beneficiaries of contracts between Toyota and its dealers; specifically, they are the intended beneficiaries of Toyota's implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiff's and Indiana Class members' Class Vehicles are inherently dangerous due to the Frame Defect and nonconformities.

### 3. Maryland Class

## COUNT VIII

## VIOLATION OF THE MARYLAND

# UNFAIR TRADE PRACTICES ACT

**(Md. Code Com. Law § 13-101, *et seq.*)**

354. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1           355. Plaintiff Timothy Dotson (for the purposes of this section, “Plaintiff”)  
2 brings this action on behalf of himself and the Maryland Class against Toyota.

3           356. Toyota, Plaintiff, and the Maryland Class members are “persons” within  
4 the meaning of Md. Code Com. Law § 13-101(h).

5           357. The Maryland Consumer Protection Act (“Maryland CPA”) provides that  
6 a person may not engage in any unfair or deceptive trade practice in the sale of any  
7 consumer good. Md. Code Com. Law § 13-303.

8           358. In the course of their business, the Defendants, through their agents,  
9 employees, and/or subsidiaries, engaged in one or more of the following unfair or  
10 deceptive acts or practices as prohibited by Md. Code Com. Law § 13-303:

- 11           a. Causing likelihood of confusion or of misunderstanding as to the  
12 approval or certification of the Class Vehicles;
- 13           b. Representing that the Class Vehicles have approval, characteristics,  
14 uses, or benefits that they do not have;
- 15           c. Representing that the Class Vehicles are of a particular standard,  
16 quality, and grade when they are not;
- 17           d. Advertising the Class Vehicles with the intent not to sell them as  
18 advertised;
- 19           e. Engaging in other conduct which created a likelihood of confusion  
20 or of misunderstanding; and/or
- 21           f. Using or employing deception, fraud, false pretense, false promise  
22 or misrepresentation, or the concealment, suppression or omission  
23 of a material fact with intent that others rely upon such  
24 concealment, suppression or omission, in connection with the  
25 advertisement and sale of the Class Vehicles, whether or not any  
26 person has in fact been misled, deceived or damaged thereby.

27           359. Toyota’s scheme and concealment of the true characteristics of the Class  
28 Vehicles were material to Plaintiff and the Maryland Class members, and Toyota



1 misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff  
2 and the Maryland Class members would rely on the misrepresentations, concealments,  
3 and omissions. Had he known the truth, Plaintiff and the Maryland Class members  
4 would not have purchased the Class Vehicles, or would have paid significantly less for  
5 them.

6 360. Plaintiff and the Maryland Class members had no way of discerning that  
7 Toyota's representations were false and misleading, or otherwise learning the facts that  
8 Toyota had concealed and/or failed to disclose.

9 361. Toyota had an ongoing duty to Plaintiff and the Maryland Class members  
10 to refrain from unfair and deceptive practices under the Maryland CPA in the course  
11 of its business. Specifically, Toyota owed Plaintiff and the Maryland Class members a  
12 duty to disclose all the material facts concerning the Class Vehicles because it  
13 possessed exclusive knowledge, it intentionally concealed such material facts from  
14 Plaintiff and the Maryland Class members, and/or it made misrepresentations that were  
15 rendered misleading because they were contradicted by withheld facts.

16 362. Plaintiff and Maryland Class members suffered ascertainable loss and  
17 actual damages as a direct and proximate result of Toyota's concealment,  
18 misrepresentations, and/or failure to disclose material information.

19 363. Toyota's violations present a continuing risk to Plaintiff and the Maryland  
20 Class, as well as to the general public. As such, Toyota's unlawful acts and practices  
21 complained of herein affect the public interest.

22 364. Pursuant to Md. Code Com. Law § 13-408, Plaintiff and the Maryland  
23 Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices,  
24 and awarding damages, punitive damages, and any other just and proper relief available  
25 under the Maryland CPA.

1 **COUNT IX**

2 **BREACH OF IMPLIED WARRANTY**

3 **(MD. CODE COM. LAW §§ 2-314, 2-315)**

4 365. Plaintiffs incorporate by reference each preceding paragraph as though  
5 fully set forth herein.

6 366. Plaintiffs Timothy Dotson and Gordon Crandall (for the purposes of this  
7 section, “Plaintiffs”) bring this action on behalf of themselves and the Maryland Class  
8 against Toyota.

9 367. Plaintiffs and the Maryland Class members are “buyers” within the  
10 meaning of Md. Code Com. Law § 2-103(1)(a).

11 368. The Toyota Defendants are and were at all relevant times “merchants”  
12 with respect to motor vehicles Md. Code Com. Law §§ 2-104(1) and “sellers” of motor  
13 vehicles under § 2-103(1)(d).

14 369. The Class Vehicles were at all relevant times “goods” within the meaning  
15 of Md. Code Com. Law §§ 2-105(1).

16 370. A warranty that the Class Vehicles were in merchantable condition and fit  
17 for the ordinary purpose for which such goods are used is implied by law pursuant to  
18 Md. Code Com. Law §§ 2-314, 2-315.

19 371. The Class Vehicles did not comply with the implied warranty of  
20 merchantability because, at the time of sale and at all times thereafter, they were  
21 defective and not in merchantable condition, would not pass without objection in the  
22 trade, and were not fit for the ordinary purpose for which vehicles were used.  
23 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
24 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
25 subjecting the Vehicles’ occupants to a significant safety risk.

26 372. Defendants’ warranty disclaimers, exclusions, and limitations, to the  
27 extent that they may be argued to apply, were, at the time of sale, and continue to be  
28 unconscionable and unenforceable to disclaim liability for a known, latent defect.

1 Defendants knew when they first made these warranties and their limitations that the  
2 defect existed and that the warranties would expire before a reasonable consumer  
3 would notice or observe the defect. Defendants also failed to take necessary actions to  
4 adequately disclose or cure the defect after the existence of the defect came to the  
5 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
6 its breaches of warranty, and consumers' losses.

7         373. Under these circumstances, it would be futile to enforce any informal  
8 resolution procedures or give Defendants any more time to cure the defect, its breaches  
9 of warranty, or otherwise attempt to resolve or address Plaintiffs' and the Maryland  
10 Class members' claims.

11         374. As a direct and foreseeable result of the defect in the Class Vehicles'  
12 frames, Plaintiffs and the Maryland Class members suffered diminution in the value of  
13 the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing  
14 their defective Class Vehicles, costs associated with arranging and obtaining  
15 alternative means of transportation, and other incidental and consequential damages  
16 recoverable under the law.

17         375. Plaintiffs and Maryland Class members have had sufficient direct dealings  
18 with either the Toyota or its agents (dealerships) to establish privity of  
19 contract between Plaintiffs and Maryland Class members.

20         376. Notwithstanding this, privity is not required in this case because Plaintiffs  
21 and Maryland Class members are intended third-party beneficiaries of contracts  
22 between Toyota and its dealers; specifically, they are the intended beneficiaries of  
23 Toyota's implied warranties. The dealers were not intended to be the ultimate  
24 consumers of the Class Vehicles; the warranty agreements were designed for and  
25 intended to benefit the ultimate consumers only. Finally, privity is also not required  
26 because Plaintiffs' and Maryland Class members' Class Vehicles are inherently  
27 dangerous due to the Frame Defect and nonconformities.

1           **4.     Massachusetts Class**

2                                   **COUNT X**

3     **DECEPTIVE ACTS OR PRACTICES PROHIBITED BY MASSACHUSETTS**  
4                                   **LAW**

5                                   **(Mass. Gen. Laws Ch. 93a, § 1, *et seq.*)**

6           377. Plaintiffs incorporate by reference each preceding paragraph as though  
7 fully set forth herein.

8           378. Plaintiffs Brian and Barbara Saunders (for the purposes of this section,  
9 “Plaintiffs”) bring this action on behalf of themselves and the Massachusetts Class  
10 against Toyota.

11          379. Toyota, Plaintiffs, and the Massachusetts Class members are “persons”  
12 within the meaning of Mass. Gen. Laws ch. 93A, § 1(a).

13          380. Toyota is engaged in “trade” or “commerce” within the meaning of Mass.  
14 Gen. Laws ch. 93A, § 1(b).

15          381. The Massachusetts consumer protection law (“Massachusetts Act”)   
16 prohibits “unfair or deceptive acts or practices in the conduct of any trade or  
17 commerce.” Mass. Gen. Laws ch. 93A, § 2.

18          382. In the course of their business, the Toyota Defendants, through their  
19 agents, employees, and/or subsidiaries, engaged in one or more of the following unfair  
20 or deceptive acts or practices as prohibited by Mass. Gen. Laws ch. 93A, § 2:

- 21               a.     Causing likelihood of confusion or of misunderstanding as to the  
22                       approval or certification of the Class Vehicles;  
23               b.     Representing that the Class Vehicles have approval, characteristics,  
24                       uses, or benefits that they do not have;  
25               c.     Representing that the Class Vehicles are of a particular standard,  
26                       quality and grade when they are not;  
27               d.     Advertising the Class Vehicles with the intent not to sell them as  
28                       advertised;

- e. Engaging in other conduct which created a likelihood of confusion or of misunderstanding; and/or
- f. Using or employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the advertisement and sale of the Class Vehicles, whether or not any person has in fact been misled, deceived or damaged thereby.

383. Toyota's scheme and concealment of the true characteristics of the Class Vehicles were material to Plaintiffs and the Massachusetts Class members, and Toyota misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiffs and the Massachusetts Class members would rely on the misrepresentations, concealments, and omissions. Had they known the truth, Plaintiffs and the Massachusetts Class members would not have purchased the Class Vehicles, or would have paid significantly less for them.

384. Plaintiffs and the Massachusetts Class members had no way of discerning that Toyota's representations were false and misleading, or otherwise learning the facts that Toyota had concealed and/or failed to disclose.

385. Toyota had an ongoing duty to Plaintiffs and the Massachusetts Class members to refrain from unfair and deceptive practices under the Massachusetts Act in the course of its business. Specifically, Toyota owed Plaintiffs and the Massachusetts Class members a duty to disclose all the material facts concerning the Class Vehicles because it possessed exclusive knowledge, it intentionally concealed such material facts from Plaintiffs and the Massachusetts Class members, and/or it made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

386. Plaintiffs and the Massachusetts Class members suffered ascertainable loss and actual damages as a direct and proximate result of Toyota's concealment, misrepresentations, and/or failure to disclose material information.

387. Toyota's violations present a continuing risk to Plaintiffs and the Massachusetts Class, as well as to the general public. As such, Toyota's unlawful acts and practices complained of herein affect the public interest.

388. Plaintiff sand the Massachusetts State Class seek an order pursuant to Mass. Gen. Laws ch. 93A § 9 enjoining Defendants' unfair and/or deceptive acts or practices, and awarding damages, punitive damages, and any other just and proper relief available under the Massachusetts Act.

389. On March 25, 2022, a notice letter was sent to Toyota complying with Mass. Gen. Laws ch. 93A, § 9(3). Plaintiff seeks all damages and relief to which Plaintiff and the Massachusetts Class are entitled.

**COUNT XI**

## BREACH OF IMPLIED WARRANTY

**(MASS. GEN. LAWS ch. 106, §§ 2-314, 2-315)**

390. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

391. Plaintiffs Brian and Barbara Saunders (for the purposes of this section, “Plaintiff”) bring this action on behalf of themselves and the Massachusetts Class against Toyota.

392. Plaintiff sand the Massachusetts Class members are “buyers” within the meaning of Mass. Gen. Laws ch. 106, § 2-103(1)(a).

393. The Toyota Defendants are and were at all relevant times “merchants” with respect to motor vehicles under Mass. Gen. Laws ch. 106, § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

394. The Class Vehicles were at all relevant times “goods” within the meaning of Mass. Gen. Laws ch. 106, §§ 2-105(1).

1        395. A warranty that the Class Vehicles were in merchantable condition and fit  
2 for the ordinary purpose for which such goods are used is implied by law pursuant to  
3 Mass. Gen. Laws ch. 106, §§ 2-314, 2-315.

4        396. The Class Vehicles did not comply with the implied warranty of  
5 merchantability because, at the time of sale and at all times thereafter, they were  
6 defective and not in merchantable condition, would not pass without objection in the  
7 trade, and were not fit for the ordinary purpose for which vehicles were used.  
8 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
9 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
10 subjecting the Vehicles' occupants to a significant safety risk.

11        397. Defendants' warranty disclaimers, exclusions, and limitations, to the  
12 extent that they may be argued to apply, were, at the time of sale, and continue to be  
13 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
14 Defendants knew when they first made these warranties and their limitations that the  
15 defect existed and that the warranties would expire before a reasonable consumer  
16 would notice or observe the defect. Defendants also failed to take necessary actions to  
17 adequately disclose or cure the defect after the existence of the defect came to the  
18 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
19 its breaches of warranty, and consumers' losses.

20        398. Under these circumstances, it would be futile to enforce any informal  
21 resolution procedures or give Defendants any more time to cure the defect, its breaches  
22 of warranty, or otherwise attempt to resolve or address Plaintiffs' and Massachusetts  
23 Class members' claims.

24        399. As a direct and foreseeable result of the defect in the Class Vehicles'  
25 frames, Plaintiffs and Massachusetts Class members suffered diminution in the value  
26 of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and  
27 servicing their defective Class Vehicles, costs associated with arranging and obtaining  
28

1 alternative means of transportation, and other incidental and consequential damages  
2 recoverable under the law.

3 400. Plaintiffs and Massachusetts Class members have had sufficient direct  
4 dealings with either the Toyota or its agents (dealerships) to establish privity of  
5 contract between Plaintiffs and Massachusetts Class members.

6 401. Notwithstanding this, privity is not required in this case because Plaintiffs  
7 and Class members are intended third-party beneficiaries of contracts between Toyota  
8 and its dealers; specifically, they are the intended beneficiaries of Toyota's implied  
9 warranties. The dealers were not intended to be the ultimate consumers of the Class  
10 Vehicles; the warranty agreements were designed for and intended to benefit the  
11 ultimate consumers only. Finally, privity is also not required because Plaintiffs' and  
12 Massachusetts Class members' Class Vehicles are inherently dangerous due to the  
13 Frame Defect and nonconformities.

14 **5. Michigan Class**

15 **COUNT XII**

16 **VIOLATION OF THE MICHIGAN**

17 **CONSUMER PROTECTION ACT**

18 **(MICH. COMP. LAWS §445.903, *et seq.*)**

19 402. Plaintiffs reallege and incorporate by reference all paragraphs as though  
20 fully set forth herein.

21 403. Plaintiff Jill Silvernale (for the purposes of this section, "Plaintiff") brings  
22 this claim on behalf of herself and the Michigan Class.

23 404. Toyota, Plaintiff, and the Michigan State Class members are "persons"  
24 within the meaning of Mich. Comp. Laws § 445.902(1)(d).

25 405. Toyota engaged in "trade" or "commerce" within the meaning of Mich.  
26 Comp. Laws § 445.902(1)(g).



1       406. The Michigan Consumer Protection Act (“Michigan CPA”) makes  
2 unlawful “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the  
3 conduct of trade or commerce ....” Mich. Comp. Laws § 445.903(1).

4       407. In the course of their business, Toyota, through their agents, employees,  
5 and/or subsidiaries, engaged in one or more of the following unfair, unconscionable  
6 and/or deceptive acts or practices as prohibited by the Michigan CPA:

- 7           a. Causing likelihood of confusion or of misunderstanding as to the  
8 approval or certification of the Class Vehicles;
- 9           b. Representing that the Class Vehicles have approval, characteristics,  
10 uses, or benefits that they do not have;
- 11          c. Representing that the Class Vehicles are of a particular standard,  
12 quality, and grade when they are not;
- 13          d. Advertising the Class Vehicles with the intent not to sell them as  
14 advertised;
- 15          e. Engaging in other conduct which created a likelihood of confusion  
16 or of misunderstanding; and/or
- 17          f. Using or employing deception, fraud, false pretense, false promise  
18 or misrepresentation, or the concealment, suppression or omission  
19 of a material fact with intent that others rely upon such  
20 concealment, suppression or omission, in connection with the  
21 advertisement and sale of the Class Vehicles, whether or not any  
22 person has in fact been misled, deceived or damaged thereby.

23       408. Toyota’s scheme and concealment of the true characteristics of the Class  
24 Vehicles were material to Plaintiff and the Michigan Class members, and Toyota  
25 misrepresented, concealed, or failed to disclose the truth with the intention that  
26 Plaintiffs and the Michigan Class members would rely on the misrepresentations,  
27 concealments, and omissions. Had they known the truth, Plaintiff and the Michigan  
28

1 Class members would not have purchased the Class Vehicles, or would have paid  
2 significantly less for them.

3 409. Plaintiff and the Michigan Class members had no way of discerning that  
4 Toyota's representations were false and misleading, or otherwise learning the facts that  
5 Toyota had concealed and/or failed to disclose.

6 410. Toyota had an ongoing duty to Plaintiff and the Michigan Class members  
7 to refrain from unfair and deceptive practices under the Michigan CPA in the course  
8 of its business. Specifically, Toyota owed Plaintiffs and the Michigan Class members  
9 a duty to disclose all the material facts concerning the Class Vehicles because it  
10 possessed exclusive knowledge, it intentionally concealed such material facts from  
11 Plaintiff and the Michigan Class members, and/or it made misrepresentations that were  
12 rendered misleading because they were contradicted by withheld facts.

13 411. Plaintiff and Michigan Class members suffered ascertainable loss and  
14 actual damages as a direct and proximate result of Toyota's concealment,  
15 misrepresentations, and/or failure to disclose material information.

16 412. Toyota's violations present a continuing risk to Plaintiff and the Michigan  
17 Class, as well as to the general public. As such, Toyota's unlawful acts and practices  
18 complained of herein affect the public interest.

19 413. Pursuant to Mich. Comp. Laws § 445.911, Plaintiff and the Michigan  
20 Class seek an order enjoining Toyota's unfair and/or deceptive acts or practices, and  
21 awarding damages, punitive damages, and any other just and proper relief available  
22 under the Michigan CPA.

### 23 **COUNT XIII**

#### 24 **BREACH OF IMPLIED WARRANTY**

25 **(Mich. Comp. Laws §§ 440.2314 and 440.2860)**

26 414. Plaintiffs incorporate by reference each preceding paragraph as though  
27 fully set forth herein.

1        415. Plaintiff Jill Silvernale (for the purposes of this section, “Plaintiff”) brings  
2 this claim on behalf of herself and the Michigan Class.

3        416. Defendants were at all relevant times “merchants” with respect to motor  
4 vehicles under Mich. Comp. Laws § 440.2104(1) and “sellers” of motor vehicles under  
5 § 440.2103(1)(c).

6        417. The Class Vehicles are and were at all relevant times “goods” within the  
7 meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

8        418. A warranty that the Class Vehicles were in merchantable condition and fit  
9 for the ordinary purpose for which vehicles are used is implied by law pursuant to  
10 Mich. Comp. Laws §§ 440.2314 and 440.2862.

11        419. Toyota sold Class Vehicles that were not in merchantable condition  
12 and/or fit for their ordinary purpose in violation of the implied warranty.

13        420. The Class Vehicles did not comply with the implied warranty of  
14 merchantability because, at the time of sale and at all times thereafter, they were  
15 defective and not in merchantable condition, would not pass without objection in the  
16 trade, and were not fit for the ordinary purpose for which vehicles were used.  
17 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
18 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
19 subjecting the Vehicles’ occupants to a significant safety risk.

20        421. Defendants’ warranty disclaimers, exclusions, and limitations, to the  
21 extent that they may be argued to apply, were, at the time of sale, and continue to be  
22 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
23 Defendants knew when they first made these warranties and their limitations that the  
24 defect existed and that the warranties would expire before a reasonable consumer  
25 would notice or observe the defect. Defendants also failed to take necessary actions to  
26 adequately disclose or cure the defect after the existence of the defect came to the  
27 public’s attention and sat on its reasonable opportunity to cure or remedy the defect,  
28 its breaches of warranty, and consumers’ losses.

422. Under these circumstances, it would be futile to enforce any informal resolution procedures or give Defendants any more time to cure the defect, its breaches of warranty, or otherwise attempt to resolve or address Plaintiff's and the Connecticut Class members' claims.

423. As a direct and foreseeable result of the defect in the Class Vehicles' frames, Plaintiff and the Michigan Class members suffered diminution in the value of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their defective Class Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

424. Plaintiff and the Michigan Class members have had sufficient direct dealings with either the Toyota or its agents (dealerships) to establish privity of contract between Plaintiff and the Michigan Class members.

425. Notwithstanding this, privity is not required in this case because Plaintiff and the Michigan Class members are intended third-party beneficiaries of contracts between Toyota and its dealers; specifically, they are the intended beneficiaries of Toyota's implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because the Class Vehicles are inherently dangerous due to the Frame Defect and nonconformities.

## 6. New Jersey Class

**COUNT XIV**

## VIOLATIONS OF THE NEW JERSEY

## CONSUMER FRAUD ACT

**(N.J. Stat. Ann. § 56:8-1, *et seq.*)**

426. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1           427. Plaintiffs Emily Barbour and Patricia Loughney (for the purposes of this  
2 section, “Plaintiffs”) bring this action on behalf of themselves and the New Jersey  
3 Class against Toyota.

4           428. Toyota, Plaintiffs, and the New Jersey Class members are “persons”  
5 within the meaning of N.J. Stat. Ann. § 56:8-1(d).

6           429. Toyota is engaged in “sales” of “merchandise” within the meaning of N.J.  
7 Stat. Ann. § 56:8-1(c), (e).

8           430. The New Jersey Consumer Fraud Act (“New Jersey CFA”) makes  
9 unlawful “[t]he act, use or employment by any person of any unconscionable  
10 commercial practice, deception, fraud, false pretense, false promise, misrepresentation,  
11 or the knowing concealment, suppression, or omission of any material fact with the  
12 intent that others rely upon such concealment, suppression or omission, in connection  
13 with the sale or advertisement of any merchandise or real estate, or with the subsequent  
14 performance of such person as aforesaid, whether or not any person has in fact been  
15 misled, deceived or damaged thereby...” N.J. Stat. Ann. § 56:8-2.

16           431. In the course of their business, the Defendants, through their agents,  
17 employees, and/or subsidiaries, engaged in the following unfair or deceptive acts or  
18 practices as prohibited by N.J. Stat. Ann. § 56:8-2: using or employing “deception,  
19 fraud, false pretense, false promise or misrepresentation, or the concealment,  
20 suppression or omission of a material fact with intent that others rely upon such  
21 concealment, suppression or omission, in connection with the advertisement and sale”  
22 of the Class Vehicles, as detailed above.

23           432. Toyota’s scheme and concealment of the true characteristics of the Class  
24 Vehicles were material to Plaintiffs and the New Jersey Class members, and Toyota  
25 misrepresented, concealed, or failed to disclose the truth with the intention that  
26 Plaintiffs and the New Jersey Class members would rely on the misrepresentations,  
27 concealments, and omissions. Had they known the truth, Plaintiffs and the New Jersey  
28

1 Class members would not have purchased the Class Vehicles, or would have paid  
2 significantly less for them.

3 433. Plaintiffs and the New Jersey Class members had no way of discerning  
4 that Toyota's representations were false and misleading, or otherwise learning the facts  
5 that Toyota had concealed and/or failed to disclose.

6 434. Toyota had an ongoing duty to Plaintiffs and the New Jersey Class  
7 members to refrain from unfair and deceptive practices under the New Jersey CFA in  
8 the course of its business. Specifically, Toyota owed Plaintiffs and the New Jersey  
9 Class members a duty to disclose all the material facts concerning the Class Vehicles  
10 because it possessed exclusive knowledge, it intentionally concealed such material  
11 facts from Plaintiffs and the New Jersey Class members, and/or it made  
12 misrepresentations that were rendered misleading because they were contradicted by  
13 withheld facts.

14 435. Plaintiffs and the New Jersey Class members suffered ascertainable loss  
15 and actual damages as a direct and proximate result of Toyota's concealment,  
16 misrepresentations, and/or failure to disclose material information.

17 436. Toyota's violations present a continuing risk to Plaintiffs and the New  
18 Jersey Class, as well as to the general public. As such, Toyota's unlawful acts and  
19 practices complained of herein affect the public interest.

20 437. Pursuant to N.J. Stat. Ann. § 56:8-19, Plaintiffs and the New Jersey Class  
21 seek an order enjoining Toyota's unfair and/or deceptive acts or practices, and awarding  
22 damages, punitive damages, and any other just and proper relief available under the  
23 New Jersey CFA.

## 24 **COUNT XV**

### 25 **BREACH OF IMPLIED WARRANTY**

#### 26 **(N.J. STAT. ANN. §§ 12A:2-314, 12A:2-315)**

27 438. Plaintiffs incorporate by reference each preceding paragraph as though  
28 fully set forth herein.

1           439. Plaintiffs Emily Barbour and Patricia Loughney (for the purposes of this  
2 section, “Plaintiffs”) bring this action on behalf of themselves and the New Jersey  
3 Class against Toyota.

4           440. Plaintiffs and the New Jersey Class members are “buyers” within the  
5 meaning of N.J. STAT. ANN. § 12A:2-103(1)(a).

6           441. The Toyota Defendants are and were at all relevant times “merchants”  
7 with respect to motor vehicles under N.J. STAT. ANN. §§ 12A:2-104(1) and “sellers” of  
8 motor vehicles under § 12A:2-103(1)(d).

9           442. The Class Vehicles were at all relevant times “goods” within the meaning  
10 of N.J. STAT. ANN. §§ 12A:2-105(1).

11           443. A warranty that the Class Vehicles were in merchantable condition and fit  
12 for the ordinary purpose for which such goods are used is implied by law pursuant to  
13 N.J. STAT. ANN. §§ 12A:2-314, 12A:2-315.

14           444. The Class Vehicles did not comply with the implied warranty of  
15 merchantability because, at the time of sale and at all times thereafter, they were  
16 defective and not in merchantable condition, would not pass without objection in the  
17 trade, and were not fit for the ordinary purpose for which vehicles were used.  
18 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
19 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
20 subjecting the Vehicles’ occupants to a significant safety risk.

21           445. Defendants’ warranty disclaimers, exclusions, and limitations, to the  
22 extent that they may be argued to apply, were, at the time of sale, and continue to be  
23 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
24 Defendants knew when they first made these warranties and their limitations that the  
25 defect existed and that the warranties would expire before a reasonable consumer  
26 would notice or observe the defect. Defendants also failed to take necessary actions to  
27 adequately disclose or cure the defect after the existence of the defect came to the  
28

1 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
2 its breaches of warranty, and consumers' losses.

3 446. Under these circumstances, it would be futile to enforce any informal  
4 resolution procedures or give Defendants any more time to cure the defect, its breaches  
5 of warranty, or otherwise attempt to resolve or address Plaintiff and the New Jersey  
6 Class members' claims.

7 447. As a direct and foreseeable result of the defect in the Class Vehicles'  
8 frames, Plaintiffs and the New Jersey Class members suffered diminution in the value  
9 of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and  
10 servicing their defective Class Vehicles, costs associated with arranging and obtaining  
11 alternative means of transportation, and other incidental and consequential damages  
12 recoverable under the law.

13 448. Plaintiffs and the New Jersey Class members have had sufficient direct  
14 dealings with either the Toyota or its agents (dealerships) to establish privity of  
15 contract between Plaintiffs and the New Jersey Class member.

16 449. Notwithstanding this, privity is not required in this case because Plaintiffs  
17 and New Jersey Class members are intended third-party beneficiaries of contracts  
18 between Toyota and its dealers; specifically, they are the intended beneficiaries of  
19 Toyota's implied warranties. The dealers were not intended to be the ultimate  
20 consumers of the Class Vehicles; the warranty agreements were designed for and  
21 intended to benefit the ultimate consumers only. Finally, privity is also not required  
22 because Plaintiffs and New Jersey Class members' Class Vehicles are inherently  
23 dangerous due to the Frame Defect and nonconformities.



1           7.     New York Class

2                             COUNT XVI

3                             **VIOLATION OF THE NEW YORK**  
4                             **DECEPTIVE ACTS AND PRACTICES ACT**  
5                             **(N.Y. Gen. Bus. Law § 349)**

6           450. Plaintiffs incorporate by reference each preceding paragraph as though  
7 fully set forth herein.

8           451. Plaintiff Thomas Pastore (for the purposes of this section, “Plaintiff”)  
9 brings this action on behalf of himself and the New York Class against Toyota.

10          452. Toyota, Plaintiff, and the New York Class members are “persons” within  
11 the meaning of N.Y. Gen. Bus. Law § 349(h).

12          453. The New York Deceptive Acts and Practices Act (“NY DAPA”) makes  
13 unlawful “[d]eceptive acts or practices in the conduct of any business, trade or  
14 commerce.” N.Y. Gen. Bus. Law § 349.

15          454. In the course of their business, Toyota engaged in one or more of the  
16 following unfair or deceptive acts or practices as prohibited by N.Y. Gen. Bus. Law  
17 § 349:

- 18               a.     Causing likelihood of confusion or of misunderstanding as to the  
19                       approval or certification of the Class Vehicles;  
20               b.     Representing that the Class Vehicles have approval, characteristics,  
21                       uses, or benefits that they do not have;  
22               c.     Representing that the Class Vehicles are of a particular standard,  
23                       quality, and grade when they are not;  
24               d.     Advertising the Class Vehicles with the intent not to sell them as  
25                       advertised;  
26               e.     Engaging in other conduct which created a likelihood of confusion  
27                       or of misunderstanding; and/or  
28

1 f. Using or employing deception, fraud, false pretense, false promise  
2 or misrepresentation, or the concealment, suppression or omission  
3 of a material fact with intent that others rely upon such  
4 concealment, suppression or omission, in connection with the  
5 advertisement and sale of the Class Vehicles, whether or not any  
6 person has in fact been misled, deceived or damaged thereby.

7 455. Toyota's scheme and concealment of the true characteristics of the Class  
8 Vehicles were material to Plaintiff and New York Class members, and Toyota  
9 misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff  
10 and the New York Class members would rely on the misrepresentations, concealments,  
11 and omissions. Had they known the truth, Plaintiff and the New York Class members  
12 would not have purchased the Class Vehicles, or would have paid significantly less for  
13 them.

14 456. Plaintiff and the New York Class members had no way of discerning that  
15 Toyota's representations were false and misleading, or otherwise learning the facts that  
16 Toyota had concealed and/or failed to disclose.

17 457. Toyota had an ongoing duty to Plaintiff and the New York Class members  
18 to refrain from unfair and deceptive practices under the New York DAPA in the course  
19 of its business. Specifically, Toyota owed Plaintiff and the New York Class members  
20 a duty to disclose all the material facts concerning the Class Vehicles because it  
21 possessed exclusive knowledge, it intentionally concealed such material facts from  
22 Plaintiff and the New York Class members, and/or it made misrepresentations that  
23 were rendered misleading because they were contradicted by withheld facts.

24 458. Plaintiff and the New York Class members suffered ascertainable loss and  
25 actual damages as a direct and proximate result of Toyota's concealment,  
26 misrepresentations, and/or failure to disclose material information.

459. Toyota's violations present a continuing risk to Plaintiff and the New York Class, as well as to the general public. As such, Toyota's unlawful acts and practices complained of herein affect the public interest.

460. Plaintiff and the New York Class seek an order enjoining Toyota's unfair and/or deceptive acts or practices, and awarding damages, punitive damages, and any other just and proper relief available under the NY DAPA.

**COUNT XVII**

## BREACH OF IMPLIED WARRANTY

**(N.Y. U.C.C. LAW §§ 2-314, 2-315)**

461. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

462. Plaintiff Thomas Pastore (for the purposes of this section, “Plaintiff”) brings this action on behalf of himself and the New York Class against Toyota.

463. Plaintiff and the New York Class members are “buyers” within the meaning of N.Y. U.C.C. LAW § 2-103(1)(a),

464. The Toyota Defendants are and were at all relevant times “merchants” with respect to motor vehicles under N.Y. U.C.C. LAW § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

465. The Class Vehicles were at all relevant times “goods” within the meaning of N.Y. U.C.C. LAW §§ 2-105(1).

466. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which such goods are used is implied by law pursuant to N.Y. U.C.C. LAW §§ 2-314, 2-315.

467. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles were equipped with frames that lacked adequate rust

1 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
2 subjecting the Vehicles' occupants to a significant safety risk.

3 468. Defendants' warranty disclaimers, exclusions, and limitations, to the  
4 extent that they may be argued to apply, were, at the time of sale, and continue to be  
5 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
6 Defendants knew when they first made these warranties and their limitations that the  
7 defect existed and that the warranties would expire before a reasonable consumer  
8 would notice or observe the defect. Defendants also failed to take necessary actions to  
9 adequately disclose or cure the defect after the existence of the defect came to the  
10 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
11 its breaches of warranty, and consumers' losses.

12 469. Under these circumstances, it would be futile to enforce any informal  
13 resolution procedures or give Defendants any more time to cure the defect, its breaches  
14 of warranty, or otherwise attempt to resolve or address Plaintiff's and the other New  
15 York Class members' claims.

16 470. As a direct and foreseeable result of the defect in the Class Vehicles'  
17 frames, Plaintiff and the New York Class members suffered diminution in the value of  
18 the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing  
19 their defective Class Vehicles, costs associated with arranging and obtaining  
20 alternative means of transportation, and other incidental and consequential damages  
21 recoverable under the law.

22 471. Plaintiff and the New York Class members have had sufficient direct  
23 dealings with either the Toyota or its agents (dealerships) to establish privity of  
24 contract between Plaintiffs and the New York Class members.

25 472. Notwithstanding this, privity is not required in this case because Plaintiff  
26 and the New York Class members are intended third-party beneficiaries of contracts  
27 between Toyota and its dealers; specifically, they are the intended beneficiaries of  
28 Toyota's implied warranties. The dealers were not intended to be the ultimate

1 consumers of the Class Vehicles; the warranty agreements were designed for and  
2 intended to benefit the ultimate consumers only. Finally, privity is also not required  
3 because Plaintiff's and the New York Class members' Class Vehicles are inherently  
4 dangerous due to the Frame Defect and nonconformities.

5 **8. Pennsylvania Class**

6 **COUNT XVIII**

7 **VIOLATION OF THE PENNSYLVANIA**  
8 **UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**  
9 **(73 Pa. Stat. Ann. § 201-1, *et seq.*)**

10 473. Plaintiffs incorporate by reference each preceding paragraph as though  
11 fully set forth herein.

12 474. Plaintiffs Christine Blight and Jack Perry (for the purposes of this section,  
13 "Plaintiffs") bring this action on behalf of themselves and the Pennsylvania Class  
14 against Toyota.

15 475. Toyota, Plaintiffs, and the Pennsylvania Class members are "persons"  
16 within the meaning of 73 Pa. Stat. Ann. § 201-2.(2).

17 476. Defendants are engaged in "trade" or "commerce" within the meaning of  
18 73 Pa. Stat. Ann. § 201-2(3).

19 477. The Pennsylvania Unfair Trade Practices Act ("Pennsylvania UTPA")  
20 prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce  
21 ...." 73 Pa. Stat. Ann. § 201 3.

22 478. In the course of their business, Defendants, through their agents,  
23 employees, and/or subsidiaries, engaged in one or more of the following unfair or  
24 deceptive acts or practices in violation of 73 Pa. Stat. Ann. § 201-3:

- 25 a. Causing likelihood of confusion or of misunderstanding as to the  
26 approval or certification of the Class Vehicles;  
27 b. Representing that the Class Vehicles have approval, characteristics,  
28 uses, or benefits that they do not have;

- c. Representing that the Class Vehicles are of a particular standard, quality and grade when they are not;
- d. Advertising the Class Vehicles with the intent not to sell them as advertised;
- e. Engaging in other conduct which created a likelihood of confusion or of misunderstanding; and/or
- f. Using or employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the advertisement and sale of the Class Vehicles, whether or not any person has in fact been misled, deceived or damaged thereby.

479. Toyota's scheme and concealment of the true characteristics of the Class Vehicles were material to Plaintiffs and the Pennsylvania Class members, and Toyota misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiffs and the Pennsylvania Class members would rely on the misrepresentations, concealments, and omissions. Had they known the truth, Plaintiffs and the Pennsylvania Class members would not have purchased the Class Vehicles, or would have paid significantly less for them.

480. Plaintiffs and the Pennsylvania Class members had no way of discerning that Toyota's representations were false and misleading, or otherwise learning the facts that Toyota had concealed and/or failed to disclose.

481. Toyota's violations present a continuing risk to Plaintiffs and the Pennsylvania Class, as well as to the general public. As such, Toyota's unlawful acts and practices complained of herein affect the public interest.

482. Toyota had an ongoing duty to Plaintiffs and the Pennsylvania Class members to refrain from unfair and deceptive practices under the Pennsylvania UTPA in the course of its business. Specifically, Toyota owed Plaintiffs and the Pennsylvania

1 Class members a duty to disclose all the material facts concerning the Class Vehicles  
2 because it possessed exclusive knowledge, it intentionally concealed such material  
3 facts from Plaintiffs and the Pennsylvania Class members, and/or it made  
4 misrepresentations that were rendered misleading because they were contradicted by  
5 withheld facts.

6 483. Plaintiffs and Pennsylvania Class members suffered ascertainable loss  
7 and actual damages as a direct and proximate result of Toyota's concealment,  
8 misrepresentations, and/or failure to disclose material information.

9 484. Pursuant to 73 Pa. Stat. Ann. § 201-9.2(a), Plaintiffs and the Pennsylvania  
10 Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices,  
11 and awarding damages, punitive and/or treble damages, and any other just and proper  
12 relief available under the Pennsylvania UTPA.

### 13 **COUNT XIX**

#### 14 **BREACH OF IMPLIED WARRANTY**

#### 15 **(13 PA. CONS. STAT. §§ 2314, 2315)**

16 485. Plaintiffs incorporate by reference each preceding paragraph as though  
17 fully set forth herein.

18 486. Plaintiff Brian Blights, Christina Blights, and Michael Turner (for the  
19 purposes of this section, "Plaintiffs") bring this action on behalf of themselves and the  
20 Pennsylvania Class against Toyota.

21 487. Plaintiffs and the Pennsylvania Class members are "buyers" within the  
22 meaning of 13 PA. CONS. STAT. § 2103(a).

23 488. The Toyota Defendants are and were at all relevant times "merchants"  
24 with respect to motor vehicles under 13 PA. CONS. STAT. § 2104 and "sellers" of motor  
25 vehicles under § 2103(a).

26 489. The Class Vehicles were at all relevant times "goods" within the meaning  
27 of 13 PA. CONS. STAT. § 2105(a).

1       490. A warranty that the Class Vehicles were in merchantable condition and fit  
2 for the ordinary purpose for which such goods are used is implied by law pursuant to  
3 13 PA. CONS. STAT. §§ 2314, 2315.

4       491. The Class Vehicles did not comply with the implied warranty of  
5 merchantability because, at the time of sale and at all times thereafter, they were  
6 defective and not in merchantable condition, would not pass without objection in the  
7 trade, and were not fit for the ordinary purpose for which vehicles were used.  
8 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
9 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
10 subjecting the Vehicles' occupants to a significant safety risk.

11       492. Defendants' warranty disclaimers, exclusions, and limitations, to the  
12 extent that they may be argued to apply, were, at the time of sale, and continue to be  
13 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
14 Defendants knew when they first made these warranties and their limitations that the  
15 defect existed and that the warranties would expire before a reasonable consumer  
16 would notice or observe the defect. Defendants also failed to take necessary actions to  
17 adequately disclose or cure the defect after the existence of the defect came to the  
18 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
19 its breaches of warranty, and consumers' losses.

20       493. Under these circumstances, it would be futile to enforce any informal  
21 resolution procedures or give Defendants any more time to cure the defect, its breaches  
22 of warranty, or otherwise attempt to resolve or address Plaintiffs and the Pennsylvania  
23 Class members' claims.

24       494. As a direct and foreseeable result of the defect in the Class Vehicles'  
25 frames, Plaintiffs and the Pennsylvania Class members suffered diminution in the value  
26 of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and  
27 servicing their defective Class Vehicles, costs associated with arranging and obtaining  
28



1 alternative means of transportation, and other incidental and consequential damages  
2 recoverable under the law.

3 495. Plaintiffs and the Pennsylvania Class members have had sufficient direct  
4 dealings with either the Toyota or its agents (dealerships) to establish privity of  
5 contract between Plaintiffs and the Pennsylvania Class members.

6 496. Notwithstanding this, privity is not required in this case because Plaintiffs  
7 and the Pennsylvania Class members are intended third-party beneficiaries of contracts  
8 between Toyota and its dealers; specifically, they are the intended beneficiaries of  
9 Toyota's implied warranties. The dealers were not intended to be the ultimate  
10 consumers of the Class Vehicles; the warranty agreements were designed for and  
11 intended to benefit the ultimate consumers only. Finally, privity is also not required  
12 because Plaintiffs and the Pennsylvania Class members' Class Vehicles are inherently  
13 dangerous due to the Frame Defect and nonconformities.

14 **9. Utah Class**

15 **COUNT XX**

16 **VIOLATION OF UTAH**

17 **CONSUMER SALES PRACTICES ACT**

18 **(Utah Code Ann. § 13-11-1, *et seq.*)**

19 497. Plaintiffs incorporate by reference each preceding paragraph as though  
20 fully set forth herein.

21 498. Plaintiff Kyle Blumin (for the purposes of this section, "Plaintiff") brings  
22 this action on behalf of himself and the Utah Class against Toyota.

23 499. The Defendants are "supplier[s]" within the meaning of Utah Code § 13-  
24 11-3(6).

25 500. Plaintiff and the Utah State Class members are "persons" under Utah  
26 Code § 13-11-3(5).

27 501. The sales of the Class Vehicles to Plaintiff and the Utah Class members  
28 were "consumer transactions" within the meaning of Utah Code § 13-11-3(2).

1           502. The Utah Consumer Sales Practices Act (“Utah CSPA”) makes unlawful  
2 any “deceptive act or practice by a supplier in connection with a consumer transaction.”  
3 Utah Code § 13-11-4. “An unconscionable act or practice by a supplier in connection  
4 with a consumer transaction” also violates the Utah CSPA. Utah Code § 13-11-5.

5           503. In the course of their business, the Defendants, through their agents,  
6 employees, and/or subsidiaries, engaged in one or more of the following unfair or  
7 deceptive acts or practices as prohibited by Utah Code § 13-11-4:

- 8           a. Representing that the Class Vehicles have approval, characteristics,  
9           uses, or benefits that they do not have;
- 10           b. Representing that the Class Vehicles are of a particular standard,  
11           quality and grade when they are not; and/or
- 12           c. Representing that the Class Vehicles were supplied in accordance  
13           with Defendants’ prior representations, although they were not as  
14           represented.

15           504. Toyota’s scheme and concealment of the true characteristics of the Class  
16 Vehicles were material to Plaintiff and the Utah Class members, and Toyota  
17 misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff  
18 and the Utah Class members would rely on the misrepresentations, concealments, and  
19 omissions. Had they known the truth, Plaintiff and the Utah Class members would not  
20 have purchased the Class Vehicles, or would have paid significantly less for them.

21           505. Plaintiff and the Utah Class members had no way of discerning that  
22 Toyota’s representations were false and misleading, or otherwise learning the facts that  
23 Toyota had concealed and/or failed to disclose.

24           506. Toyota’s violations present a continuing risk to Plaintiff and the Utah  
25 Class, as well as to the general public. As such, Toyota’s unlawful acts and practices  
26 complained of herein affect the public interest.

27           507. Toyota had an ongoing duty to Plaintiff and the Utah Class members to  
28 refrain from unfair and deceptive practices under the Utah CSPA in the course of its

1 business. Specifically, Toyota owed Plaintiff and the Utah Class members a duty to  
2 disclose all the material facts concerning the Class Vehicles because it possessed  
3 exclusive knowledge, it intentionally concealed such material facts from Plaintiff and  
4 the Utah Class members, and/or it made misrepresentations that were rendered  
5 misleading because they were contradicted by withheld facts.

6 508. Plaintiff and the Utah Class members suffered ascertainable loss and  
7 actual damages as a direct and proximate result of Toyota's concealment,  
8 misrepresentations, and/or failure to disclose material information.

9 509. Plaintiff and the Utah Class seek an order enjoining Toyota's unfair and/or  
10 deceptive acts or practices, and awarding damages, punitive damages, and any other  
11 just and proper relief available under the Utah CSPA.

## 12 **COUNT XXI**

### 13 **VIOLATION OF UTAH**

#### 14 **TRUTH IN ADVERTISING LAW**

#### 15 **(Utah Code Ann. § 13-11a-1, *et seq.*)**

16 510. Plaintiffs incorporate by reference each preceding paragraph as though  
17 fully set forth herein.

18 511. Plaintiff Kyle Blumin (for the purposes of this section, "Plaintiff") brings  
19 this action on behalf of himself and the Utah Class against Toyota.

20 512. Plaintiff, the Utah Class, and the Defendants are "person[s]" within the  
21 meaning of Utah Code § 13-11a-1(7).

22 513. Utah's Truth In Advertising law makes unlawful any deceptive practice  
23 undertaken in the course of a person's business. Utah Code § 13-11a-3.

24 514. In the course of their business, the Defendants, through their agents,  
25 employees, and/or subsidiaries, engaged in one or more of the following unfair or  
26 deceptive acts or practices as defined in Utah Code § 13-11a-3:

- 27 a. Causing likelihood of confusion or of misunderstanding as to the  
28 approval or certification of the Class Vehicles;

- b. Representing that the Class Vehicles have approval, characteristics, uses, or benefits that they do not have;
- c. representing that the Class Vehicles are of a particular standard, quality, and grade when they are not;
- d. Advertising the Class Vehicles with the intent not to sell them as advertised;
- e. Engaging in other conduct which created a likelihood of confusion or of misunderstanding; and/or
- f. Using or employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the advertisement and sale of the Class Vehicles, whether or not any person has in fact been misled, deceived or damaged thereby.

515. Toyota's scheme and concealment of the true characteristics of the Class Vehicles were material to Plaintiff and the Utah Class members, and Toyota misrepresented, concealed, or failed to disclose the truth with the intention that Plaintiff and the Utah Class members would rely on the misrepresentations, concealments, and omissions. Had they known the truth, Plaintiff and the Utah Class members would not have purchased the Class Vehicles, or would have paid significantly less for them.

516. Plaintiff and the Utah Class members had no way of discerning that Toyota's representations were false and misleading, or otherwise learning the facts that Toyota had concealed and/or failed to disclose.

517. Toyota's violations present a continuing risk to Plaintiff and the Utah Class, as well as to the general public. As such, Toyota's unlawful acts and practices complained of herein affect the public interest.

518. Toyota had an ongoing duty to Plaintiff and the Utah Class members to refrain from unfair and deceptive practices under the Utah Truth In Advertising law in

1 the course of its business. Specifically, Toyota owed Plaintiff and the Utah Class  
2 members a duty to disclose all the material facts concerning the Class Vehicles because  
3 it possessed exclusive knowledge, it intentionally concealed such material facts from  
4 Plaintiff and the Utah Class members, and/or it made misrepresentations that were  
5 rendered misleading because they were contradicted by withheld facts.

6 519. Plaintiff and the Utah Class members suffered ascertainable loss and  
7 actual damages as a direct and proximate result of Toyota's concealment,  
8 misrepresentations, and/or failure to disclose material information.

9 520. Pursuant to Utah Code Ann. § 13-11a-4, Plaintiff and the Utah Class seek  
10 an order enjoining Toyota's unfair and/or deceptive acts or practices, and awarding  
11 damages, punitive damages, and any other just and proper relief available under the  
12 Utah Truth In Advertising law.

## 13 **COUNT XXII**

### 14 **BREACH OF IMPLIED WARRANTY**

#### 15 **(UTAH CODE ANN. §§ 70A-2-314, 70A-2-315)**

16 521. Plaintiffs incorporate by reference each preceding paragraph as though  
17 fully set forth herein.

18 522. Plaintiff Kyle Blumin (for the purposes of this section, "Plaintiff") brings  
19 this action on behalf of himself and the Utah Class against Toyota.

20 523. Plaintiff and the Utah Class members are "buyers" within the meaning of  
21 UTAH CODE ANN. § 70A-2-313(1).

22 524. The Toyota Defendants are and were at all relevant times "merchants"  
23 with respect to motor vehicles under UTAH CODE ANN. §§ 70A-2-104(1) and "sellers"  
24 of motor vehicles under § 70A-2-103(1)(a).

25 525. The Class Vehicles were at all relevant times "goods" within the meaning  
26 of UTAH CODE ANN. §§ 70A-2-105(1).

1           526. A warranty that the Class Vehicles were in merchantable condition and fit  
2 for the ordinary purpose for which such goods are used is implied by law pursuant to  
3 UTAH CODE ANN. §§ 70A-2-314, 70A-2-315.

4           527. The Class Vehicles did not comply with the implied warranty of  
5 merchantability because, at the time of sale and at all times thereafter, they were  
6 defective and not in merchantable condition, would not pass without objection in the  
7 trade, and were not fit for the ordinary purpose for which vehicles were used.  
8 Specifically, the Class Vehicles were equipped with frames that lacked adequate rust  
9 corrosion protection and were prone to excessive and premature rust corrosion, thereby  
10 subjecting the Vehicles' occupants to a significant safety risk.

11           528. Defendants' warranty disclaimers, exclusions, and limitations, to the  
12 extent that they may be argued to apply, were, at the time of sale, and continue to be  
13 unconscionable and unenforceable to disclaim liability for a known, latent defect.  
14 Defendants knew when they first made these warranties and their limitations that the  
15 defect existed and that the warranties would expire before a reasonable consumer  
16 would notice or observe the defect. Defendants also failed to take necessary actions to  
17 adequately disclose or cure the defect after the existence of the defect came to the  
18 public's attention and sat on its reasonable opportunity to cure or remedy the defect,  
19 its breaches of warranty, and consumers' losses.

20           529. Under these circumstances, it would be futile to enforce any informal  
21 resolution procedures or give Defendants any more time to cure the defect, its breaches  
22 of warranty, or otherwise attempt to resolve or address Plaintiff and the Utah Class  
23 members' claims.

24           530. As a direct and foreseeable result of the defect in the Class Vehicles'  
25 frames, Plaintiff and the Utah Class members suffered diminution in the value of the  
26 Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing  
27 their defective Class Vehicles, costs associated with arranging and obtaining  
28

1 alternative means of transportation, and other incidental and consequential damages  
2 recoverable under the law.

3 531. Plaintiff and the Utah Class members have had sufficient direct dealings  
4 with either the Toyota or its agents (dealerships) to establish privity of  
5 contract between Plaintiff and the Utah Class members.

6 532. Notwithstanding this, privity is not required in this case because Plaintiffs  
7 and Class members are intended third-party beneficiaries of contracts between Toyota  
8 and its dealers; specifically, they are the intended beneficiaries of Toyota's implied  
9 warranties. The dealers were not intended to be the ultimate consumers of the Class  
10 Vehicles; the warranty agreements were designed for and intended to benefit the  
11 ultimate consumers only. Finally, privity is also not required because Plaintiff's and  
12 the Utah Class members' Class Vehicles are inherently dangerous due to the Frame  
13 Defect and nonconformities.

#### 14 **VIII. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs, individually and on behalf of the members of the  
16 Nationwide and Classes, respectfully request that the Court certify the proposed  
17 Classes, including designating the named Plaintiffs as representatives of the  
18 Nationwide Class and respective State Classes, appointing the undersigned as Class  
19 Counsel, and designating any appropriate issue classes, under the applicable provisions  
20 of Federal Rule of Civil Procedure 23, and that the Court enter judgment in Plaintiffs'  
21 favor and against Toyota including the following relief:

22 (i) A declaration that any applicable statutes of limitations are tolled due to  
23 Toyota's fraudulent concealment and that Toyota is estopped from relying on any  
24 statutes of limitations in defense;

25 (ii) A declaration that (1) the Class Vehicles lack adequate rust corrosion  
26 protection and are defective; (2) all persons who purchased the Class Vehicles are to  
27 be provided the best practicable notice of the Defect; and (3) Defendants must establish  
28 an inspection, repair, and replacement program and protocol and notify Class members

1 of such program, pursuant to which Defendants, including its authorized  
2 representatives, and at no cost to Class members, will inspect, upon request, Class  
3 members' Class Vehicles for frame rust corrosion, treat the Class Vehicles that have  
4 not exhibited rust corrosion with adequate rust corrosion protection, and repair or  
5 replace the frames on the Class Vehicles that have experienced frame rust corrosion;

6 (iii) Restitution, compensatory damages, and costs for economic loss and out-  
7 of- pocket costs;

8 (iv) Punitive and exemplary damages under applicable law;

9 (v) Reimbursement and compensation of the full purchase price for any  
10 repairs or replacements purchased by a Plaintiff or Class member to remedy the Frame  
11 Defect;

12 (vi) A determination that Toyota is financially responsible for all Class notices  
13 and the administration of Class relief;

14 (vii) Any applicable statutory or civil penalties;

15 (viii) An order requiring Toyota to pay both pre-judgment and post-judgment  
16 interest on any amounts awarded;

17 (ix) An award of reasonable counsel fees, plus reimbursement of reasonable  
18 costs, expenses, and disbursements, including reasonable allowances for the fees of  
19 experts;

20 (x) Leave to amend this Complaint to conform to the evidence produced in  
21 discovery and at trial; and

22 (xi) Any such other and further relief the Court deems just and equitable.

### 23 **IX. DEMAND FOR JURY TRIAL**

24 Plaintiffs and Class members hereby demand a trial by jury, pursuant to Federal  
25 Rule of Civil Procedure 38(b), of all issues so triable.



1 Dated: July 29, 2022.

Respectfully submitted,

2  
3 **KOPELOWITZ OSTROW FERGUSON**  
4 **WEISELBERG GILBERT**

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